

# **Contracts with Equality: An Evaluation of the San Francisco Equal Benefits Ordinance**



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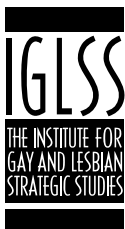
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## EXECUTIVE SUMMARY

San Francisco's Equal Benefits Ordinance (EBO) requires city contractors with contracts worth more than \$5,000 per year to offer equal benefits to employees with domestic partners if they provide benefits to spouses. Since becoming effective on June 1, 1997, the Ordinance has advanced economic equality for gays, lesbians, bisexuals, and transgender people in many locations in the United States by delivering the option to choose partner benefits to more than 1.7 million employees working at over 3,500 companies or organizations. An estimated 26,000 domestic partners are now enjoying health insurance coverage and other benefits that they may have previously been unable to obtain. This accomplishment came with low costs. The City's administrative costs were very low, and the analysis suggests that increases in city contracting costs were probably small. In addition, some of these costs were likely offset by lower public health spending because more residents were covered by health insurance.

*San Francisco's Human Rights Commission was the compliance authority for the EBO and had to overcome several barriers to implementation.*

- The City's accommodating approach toward compliance was instrumental in gaining cooperation among contractors, and the Commission formulated rules and procedures with accommodation in mind. Key members of the Board of Supervisors and the Mayor worked closely with the Chamber of Commerce, industry associations, and employers to overcome problems.
- The City created a simplified waiver process for departments that found it necessary, under the rules of the Ordinance, to transact business with non-compliant entities.
- Some contractors opposed the EBO for religious or moral reasons; other contractors perceived unnecessary government intrusion. Several contractors filed lawsuits challenging the EBO.

*The City implemented the EBO with a minimum of red tape and with fairly small additional administrative expenses.*

- After the initial delays in processing thousands of compliance forms, the Human Rights Commission quickly gained control of the process and never ran a significant backlog.
- The five full-time equivalent staff required to administer the HRC represented a small cost to the City. A simple estimate suggests that the costs were less than \$300,000 per year.
- At least some of the additional costs were likely offset by the City's savings from lower public health expenditures, a result of more residents receiving health insurance coverage as domestic partners.

*The EBO achieved its goals of equalizing benefits for many contractors' employees.*

- The City has gained high levels of corporate and contractor cooperation, with 94% of all finalized EBO certification applications resulting in compliance with the law.
- The number of contractors that have complied by offering domestic partner benefits has increased over time, demonstrating the law's effectiveness in its primary goal of equalizing the benefits for domestic partners of the City's contractors. No evidence exists to suggest that employers have diminished their benefits in order to comply.
- The number of waivers granted has remained fairly stable over time, but the exempted contracts account for only 10% of the City's spending on goods and services.
- Employers' access to domestic partner coverage increased as a result of the EBO. Health insurers responded to the increased demand for partner coverage, with the number offering domestic partner benefits increasing from about 14 when the EBO was first passed in 1996 to roughly 150 in 2001.

*The City withstood legal challenges to the EBO but was required to make minor modifications.* Three legal challenges to the EBO threatened to undermine the city's efforts. One case was dismissed and the remaining two were largely turned back. The City incurred unknown legal costs in its efforts, but the Courts upheld most of the EBO, while requiring two changes:

- The EBO cannot require equalization of contractors' health and pension benefits (ERISA-based) when a City agency is acting as a regulator in a monopoly situation, such as at the San Francisco International Airport.
- The Court somewhat limited the geographic reach of the EBO.

*Fears of dramatic increases in the prices paid for goods and services by the City of San Francisco were not warranted.* The City's contract expenditures might have increased as the result of the EBO if contractors' labor costs rose, if competition for the City's business diminished, or if intermediaries or brokers inflated prices of goods. The resulting conclusion is that the actual cost of the ordinance to the City of San Francisco is probably small.

- Increases in labor costs for contractors passed through to the City were small, in the approximate range of 0.02% to 0.12%.
- San Francisco suffered some reduced competition due to fewer contractors submitting bids for City contracts. This level of competition fell by roughly one-half bid per contract for one year. After the first year of the EBO, the level of competition began to recover.
- San Francisco experienced an increase in the number of intermediaries bidding on City contracts, which may have, at least in the short run, contributed to an increase in price experienced by the City.
- An analysis of expenditure data from the San Francisco International Airport found no evidence of a large increase in San Francisco's spending on goods and services after implementation of the EBO. This study concludes that the actual cost of the ordinance to the City of San Francisco is probably small.

### *Recommendations for San Francisco and Other Cities Considering an EBO*

*Implementation Flexibility.* An accommodating and cooperative approach conveyed the City's awareness that changes to employee benefits may be time-consuming and may involve some initial compliance costs. San Francisco accommodated contractors' concerns in ways that might be helpful elsewhere:

- Encourage city officials and politicians to work closely with the local Chamber of Commerce and other business associations to work out problems in advance.
- Grant a *provisional compliance status* for contractors that face valid time limitations in attaining compliance.
- Allow "*reasonable measures*" compliance for contractors that demonstrate that a best effort was made.

*Encourage Efficiency in Implementation.* The goal of the EBO was to encourage equal treatment of employees with domestic partners, but politicians must also take the efficiency of such a program into account.

- Assess and monitor efficiency by developing a system to account for costs, savings, and other issues associated with the new program to the extent feasible.
- Facilitate the waiver process. San Francisco developed a streamlined process for the most common kind of waiver.
- Incorporate systematic legislative oversight of the numbers of different types of waivers and associated contractor dollars in order to safeguard against abuse of waivers.

*Plan for Staffing Needs.*

- Staffing needs follow a predictable pattern over time and will depend on the compliance enforcement method used. San Francisco used five full-time equivalent staff on the EBO.
- Some administrative costs could be reduced in other cities if they were to accept San Francisco's compliance determination for contractors.

*Avoid higher expenditures for goods and services.* A municipality can take a number of measures to mitigate any potential increases in cost following the passage of an equal benefits ordinance.

- Disseminate literature throughout the city government regarding expected upward pressures on prices, namely that they are small, and require companies that are claiming excessive cost increases to justify them.
- For the first few years following implementation of the new ordinance, increase the number of bids required for city contracts.
- Minimize the number of intermediaries that appear by making compliance as easy as possible. Some practical steps include allowing sufficient time for contractors to prepare, disseminating information on available insurers and maintaining a streamlined verification process.

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## PART ONE

# THE EQUAL BENEFITS ORDINANCE: BACKGROUND, IMPLEMENTATION, AND IMPACT

San Francisco's Equal Benefits Ordinance (EBO) requires that if employers holding city contracts worth more than \$5,000 per year provide spousal benefits, they must extend those same benefits to the domestic partners of their employees. The ordinance was signed into law the first week of December 1996 and became effective June 1 of the following year.<sup>1</sup> An innovative piece of legislation, the EBO had the potential to advance economic equality for gays, lesbians, bisexuals, and transgender people in many locations in the United States. In its third yearly implementation report (August 2000), the San Francisco Human Rights Commission, which administers the ordinance, observes that "the employee benefits landscape has been forever changed as a result of the Equal Benefits Ordinance." As evidence, the Commission cites rising numbers of employers offering domestic partner (DP) benefits, increasing support among labor unions, and increasing numbers of insurance providers expanding their offerings to include domestic partnership options.

The EBO's impact has been magnified because it has inspired other cities to consider and, in several instances, pass similar legislation. By the end of 2003, the State of California and seven cities or counties—including Seattle and Los Angeles—had enacted similar laws (see appendix). New York City and Atlanta are currently considering such legislation.

While the concept of equalizing employee benefits for domestic partners of city contractors' employees was new with the EBO, governmental insistence upon non-discrimination toward gays and lesbians for city contractors was not new. San Francisco implemented such a non-discrimination policy in 1972, and continues to enforce it along with the EBO today. A 1994 Charlottesville, Virginia, ordinance imposed similar non-discrimination requirements on city contracts worth \$10,000 or more, and a Maryland bill would prohibit the Washington Suburban Sanitary Commission and its contractors from discriminating "on the basis of sexual orientation and other factors."<sup>2</sup> Though these other laws do not directly entail domestic partner benefits, the courts may someday interpret employment discrimination to include them. One recent Court of Appeals decision in New York, for example (*Levin v. Yeshiva University*), may lead some courts to interpret marriage-based benefits as "disparate impact discrimination on the basis of sexual orientation" under human rights laws.<sup>3</sup>

Because equal benefits laws are spreading, this report addresses some of the important implementation issues faced by San Francisco and examines the City's oversight and enforcement of the law. The report also evaluates important outcomes: contractor response and compliance (including contractor waivers and lawsuits against the City), employee benefits access by domestic partners, partner benefit coverage in the health insurance market, administrative costs to the City, and savings to the public health system.

<sup>1</sup> The Equal Benefits Ordinance amends San Francisco's Nondiscrimination in Contracts Ordinances, which are Chapters 12B and 12C of the City's Administrative Code. The City keeps track by employer, not by contract, so all contracts for a single employer contribute to the \$5,000 threshold.

<sup>2</sup> Will O'Bryan. *The New York Blade*. "Court Upholds Equal Benefits in San Francisco." June 22, 2001. p. 10.

<sup>3</sup> Inga Sorensen. *The New York Blade*. "Gay Activists Laud Yeshiva Case Ruling." July 6, 2001.



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**Box 1: Methods**

This evaluation is retrospective and was begun more than two years after the EBO was passed. Officials from several city agencies and the Board of Supervisors who were involved in the passage and implementation of the EBO were interviewed, many of whom had been involved with the EBO from the start. Several people, however, were unavailable or had left their positions. The City's Human Rights Commission ("the Commission" or HRC)—the agency charged with rulemaking, implementation, and enforcement of the ordinance—provided the greatest amount of information. Cynthia Goldstein, the HRC Equal Benefits Program Manager who has worked on the ordinance since passage of the legislation, was an extremely valuable and cooperative source of information. Other sources included, but were not limited to, newspaper articles, Internet and library searches, contractor interviews, and interviews with local activists who originated the EBO. An extensive interview with one of those activists, in particular—Jeff Sheehy—was extremely helpful for filling in needed background information.

The Human Rights Campaign, in Washington, D.C., supplied access to its WorkNet database so that we could cross check San Francisco's records for the number of employers providing domestic partner benefits before and after implementation of the ordinance. Finally, the City's Human Rights Commission provided us with its database of contract waivers, which contained data on the number of contract waivers and the value of those contracts.

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## 1. BACKGROUND: AN IDEA BECOMES LEGISLATION

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The Equal Benefits Ordinance was born of a coffee-table discussion among three experienced San Francisco activists who were members of the Harvey Milk Democratic Club. Jeff Sheehy, Carol Stuart, and Geoff Kors were talking one day in 1996, soon after Sheehy's election as president of the Milk Club. They were seeking a way to leverage the organization's valuable upcoming electoral endorsements to improve the lives of San Francisco's lesbian, gay, bisexual, and transgender (LGBT) population. They struck upon the idea of drafting a bill and then trading legislative support for the club's political endorsements. The three then asked what they should draft.

Earlier the same year, Jeff Sheehy had been one of several gay Democratic leaders from across the country invited to a meeting in Washington, D.C., by the Democratic National Committee. At that meeting, Sheehy had learned that President Clinton was going to sign the Defense of Marriage Act (DOMA) into law as a sacrifice to the newly powerful Congressional Republicans in order to attain some key Democratic goals.

Carol Stuart suggested that the Milk Club use its endorsements to exact retribution for the DOMA "sellout" by trying to obtain for LGBT San Franciscans the benefits that married couples receive from their employers. The other two agreed. Geoff Kors formulated the idea of linking the benefits to city contracts, and the EBO concept was hatched.

The intent of the activists was not symbolic. Stuart saw their bill as a chance to obtain both needed benefits and practical revenge against DOMA's passage. Sheehy also cited "tangible benefits" as the goal. Furthermore, Stuart felt that the ultimate aim was national in scope. She recounted that they did not want their tax dollars being used to discriminate against "us" in the form of legislation such as DOMA, which defined marriage for federal purposes as between a man and a woman and gave states the authority not to recognize a same-sex marriage from another state.

After writing the first draft of the legislation, the three authors took it to San Francisco Supervisor Tom Ammiano, who said he would introduce the bill to the Board. Soon afterward, Leslie Katz was appointed to the Board to fill a vacated seat and hired Geof Kors, one of her law partners and a co-author of the bill. Ammiano, Katz, and Susan Leal then introduced the legislation to the board jointly; eight supervisors ultimately co-sponsored the bill.

The day before the required second reading of the legislation, the Catholic Archbishop informed the City's politicians that he could not support the bill. The next day the Board voted on a motion to table discussion of the bill, which would have spelled its demise. Even though all but one supervisor, Tom Hsieh, had previously expressed support for the bill, the Archbishop's objection nearly derailed it because Catholic Charities held \$10 - \$12 million in contracts per year. The only hope was if Hsieh were not present for the vote to table, which would make the tally five in favor and five against, with a tie going in favor of the bill. A gay staffer in Hsieh's office was able to keep him from attending the vote on the motion to table. The EBO later passed 10 – 0, with Hsieh abstaining. The Mayor signed the bill into law the first week of November 1996.

An amicable solution with Catholic Charities was later worked out and is discussed in more depth below. However, this debate before passage of the EBO suggested that the rulemaking and implementation process would not be easy since certain interests were going to show considerable opposition to the measure.

## 2. THE RULEMAKING AND IMPLEMENTATION PROCESS

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The evaluation of the implementation phase of the Equal Benefits Ordinance concerns the timeliness of the process undertaken and the effectiveness and efficiency of the resulting rules and procedures. The timeliness of the rulemaking, as well as the completion of the entire implementation process, depended largely upon the City's ability to predict, recognize, and address significant barriers that stood in the way of implementing the EBO. Therefore, the process of addressing those barriers and the tone the City set are examined first. The report then turns to the effectiveness of the rules—whether they achieved the goals of the legislation—and whether they allowed for contractors and the city government to comply with them efficiently (and cost effectively) via straightforward procedures.

### *A. The Human Rights Commission—The Rulemaking, Compliance, and Enforcement Authority*

Carol Stuart felt it was wise to insert the legislation into the City's nondiscrimination code. This location gave the Human Rights Commission (HRC), the administrative department under the mayor that enforced San Francisco's nondiscrimination laws, responsibility for implementing and enforcing the EBO. Some of those interviewed stated that they had been concerned that the Commission was not the appropriate place to house this kind of program and that perhaps it might have been better to have city departments implement and enforce the law. That alternative configuration would have allowed for a degree of "sunshine" in the enforcement process because there are more points of public access to city departments than with a single agency. However, the decentralized delegation of responsibility to city departments would probably have reduced uniformity in the enforcement of rules and could have opened up possibilities for special interests to influence the process at many more points. In addition, the organizational mission of the Commission is nondiscrimination, whereas other city departments would have to focus on their primary missions first, such as housing, water, or transportation, with equalization of contractor benefits necessarily taking on secondary significance.<sup>4</sup>

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<sup>4</sup> Cynthia Goldstein of the HRC made this point.

### B. Setting a Cooperative Tone

The broad scope of the implementation work prompted the Board of Supervisors and the Mayor to push the actual EBO implementation date out to June 1, 1997, rather than allow only the customary 30 days. In order to discourage a rush to initiate new contracts that would escape the law during this period, the Board also passed an advisory Resolution that requested that city departments include the requirements of the EBO in new contracts that were to last two years or more. The Commission formed an advisory group that drew on the expertise of various city officials, with members from the Mayor's staff, the Board of Supervisors' staff, the Purchasing Department, the Mayor's Office of Economic Development, the Mayor's Office of Small Business, the City Attorney's Office, and the Small Business Advisory Commission.<sup>5</sup>

Because education and outreach were important to the Commission's efforts, the HRC developed many informational materials, including a summary brochure, an in-depth question and answer guide, a list of insurance providers, a list of jurisdictions with domestic partnership registries, sample forms and domestic partner policies, and a dedicated portion of the HRC website. The Commission offered educational workshops, individual consultation to employers, and special workshops for non-profits and small businesses, which were co-sponsored by the San Francisco Chamber of Commerce. The Commission also developed training materials and workshops for city employees responsible for contracting functions and held an insurance fair to match insurers that wrote domestic partner policies with employers that needed them.<sup>6</sup>

As expected, several serious barriers to implementation (and some less serious ones) quickly emerged. The City's politicians and administrators took an accommodating approach that proved effective in overcoming most of them. From the beginning, City officials hoped to make it clear to contractors and to the public that they wanted the legislation to achieve its goal of equalizing benefits and that they understood that accommodations by the City and by contractors would be necessary. The deferral of the actual implementation date and the education and outreach efforts reflect this sensitivity. During the implementation months, many negotiations took place among the City's administrators, politicians, activists, contractors, industry associations, and other interested parties.<sup>7</sup>

The rules eventually formulated by the Human Rights Commission allow for substantial flexibility. Some examples:<sup>8</sup>

- If contractors face great difficulty in making policy changes outside open enrollment periods, the Commission allows the contractor to delay adding partner coverage as long as the contractor has committed to compliance.
- If contractors must substantially revise their personnel policies, the rules allow a three-month delay, with more time permitted at the discretion of the Commission.
- The Commission allows employers with collective bargaining agreements to wait until the next contract cycle as long as the employer tries to gain the benefits for employees sooner with the union's agreement.

<sup>5</sup> San Francisco Human Rights Commission. *The Equal Benefits Ordinance, A Six Month Report*. January 6, 1998, pp. 5-6.

<sup>6</sup> Ibid., pp. 5-7. Also see their *Two Year Report* (August 12, 1999), *Three Year Report* (August 10, 2000), and *Fourth Year Report* (October 25, 2001).

<sup>7</sup> Too much accommodation by the City could have been risky as well. As Langbein and Kerwin found, in a study of compliance in a regulatory setting, sometimes even if the benefits of compliance exceed the costs, the chance of getting caught does not reduce the profitability of noncompliance if an agency is willing to negotiate a reduction in compliance costs. See Laura Langbein and Cornelius Kerwin. 1985. "Implementation, Negotiation and Compliance in Environmental and Workplace Safety Programs." *Journal of Politics* 47:854-80.

<sup>8</sup> HRC *Six Month Report*, p. 9.

When a contractor faced serious problems or time limitations in getting into compliance (such as finding a health insurer that covered domestic partner benefits), the HRC utilized a “provisional compliance” approach. The City allowed a contractor to submit its paperwork, demonstrate that it was working toward compliance, and obtain provisional compliance status. Cynthia Goldstein recalled that the provisional status was a very effective tool in helping contractors who were making good faith efforts. She noted that it also fostered a cooperative atmosphere that was very important for gaining public and contractor support for the EBO.

The law also allowed employers to claim they had taken “reasonable measures” when the contractor made its best effort to offer equal benefits but was unable to do so. An example might be when there was no available health insurer, or possibly an interfering state or federal law. In such cases, employers could give an employee with a domestic partner a cash payment equal to the amount paid by the employer for the spousal benefit(s). The Commission would also accept a somewhat unequal partner benefit if it was the “closest approximation” to an equal benefit. The HRC hoped that the latter exception would discourage employers from equalizing benefits by reducing the benefits offered to all employees.<sup>9</sup>

### C. Implementation Barriers

Implementation barriers are legal, political, religious, moral, economic, geographic, and structural hurdles that must be overcome during the process of carrying out legislative mandates. The barriers faced by San Francisco fall into two broad groups: health insurance market barriers and contractor objections, which include legal and religious challenges.

Before discussing the implementation barriers encountered by the City, we note that much of the business community supported the EBO, and the majority of city contractors complied without objection. One local employer interviewed, for example, began providing similar benefits the year before the EBO came into effect. The human resources manager at another business, a manufacturer in a sparsely populated area of a somewhat conservative state, felt that the ordinance was fair and encountered no internal corporate resistance. In fact, she also stated that because there was a labor shortage in her area, other local companies were contemplating their own domestic partner policies as an incentive to bring in more good employees.

#### *The Health Insurance Market.*

The small number of health insurers that wrote domestic partner policies in the San Francisco market became a significant implementation barrier, especially for small employers. Roughly 14 insurers in the United States offered domestic partner coverage when the EBO took effect in June 1997, with only three willing to write policies for small groups.<sup>10</sup> The Commission held an “insurance fair” before the EBO effective date to help employers find insurers.<sup>11</sup> The Chamber of Commerce worked with the City to make the process easier by creating a group insurance plan available to its members, no matter what size the company. The insurance market eventually responded to this new demand for domestic partner coverage, however, since soon after enactment 108 insurers wrote DP policies, and at least 19 accepted small groups.<sup>12</sup> Although the insurance market for partner benefits has improved, the Commission continues to maintain a national list of insurers since coverage remains difficult to find in some parts of the country.<sup>13</sup>

One solution to the health insurance problem would have been a law that required health insurers to underwrite coverage for domestic partners. Indeed, Assemblywoman Carole Migden, who was

<sup>9</sup> Ibid. Also see the *Rules of Procedure for the Nondiscrimination in Contracts: Equal Benefits Provisions of Chapter 12B of the San Francisco Administrative Code*.

<sup>10</sup> Ibid., p. 11. This number should be viewed as having been derived informally, according to an HRC official.

<sup>11</sup> Ibid., p. 7.

<sup>12</sup> Ibid., pp. 7, 11-12.

<sup>13</sup> Cynthia Goldstein at the HRC made this point.

formerly on the San Francisco Board of Supervisors, proposed such a state law, which did not pass.<sup>14</sup> In 2001, California passed AB 25 (effective January 1, 2002), a statewide domestic partner registration law that also required health insurers in the state to offer domestic partnership coverage if spousal coverage is offered.<sup>15</sup> The insurance market should be less of an issue for other California locales adopting equal benefits legislation now that AB 25 is in effect.

#### *Contractor Objections.*

Contractors had several different types of objections to the EBO. Some contractors objected on religious or moral grounds, some felt the EBO was a government intrusion on business, and some sued the City because they believed the EBO was not legally defensible. The City used various methods to address these barriers effectively and to keep the implementation process moving forward. The examples below describe three important contractor objections and their resolutions.

#### *Religious and Moral Objections.*

The first case is the religious or moral objection to providing domestic partner benefits that arose with the Catholic Charities. The City and County of San Francisco do not contract with official religious institutions but do hold contracts with affiliated non-profit entities, such as Catholic Charities. The Charities were, of course, under no obligation to seek new or renewed city contracts if they found the implications of the EBO morally objectionable. But neither the City nor the Catholic Charities was interested in ending its long-term contracts, which included the provision of many community-based services in contracts totaling \$10 to \$12 million. City leaders undoubtedly wanted to keep as many employees as possible covered under city contracts, maximizing the number of individuals who would benefit from the ordinance, which in itself made it attractive to maintain contracts with large contractors. The City also likely wanted to contain any political damage that might result from a disagreement with the Catholic Charities.

In compliance negotiations with the Catholic Charities, City officials stressed the beneficial goals of the ordinance that the City and the Catholic Charities had in common, such as the increase in health care coverage that would result. This goal resonated with the Catholic Charities. The Human Rights Commission and some of the City's politicians worked out an agreement with the Charities under which the equal benefits did not have to accrue to a domestic partner, per se, but could go to an adult member of the employee's household, including a relative. This solution met the requirements of the legislation (the employee could choose a DP), did not require a legislative amendment, was agreeable to Catholic Charities, and as in the following FedEx example, avoided sanctions.

#### *Objections to Government Intrusion.*

In a second example, a contractor objected to the government intrusion on business decisions, although this contractor might have also had an unstated moral objection. Federal Express, based in Memphis, Tennessee, made it known to the City through unofficial channels that the company would never comply with the EBO. While FedEx formally stated that it objected to local government interference with business,<sup>16</sup> many observers have surmised that the objections were religious or moral, as well. In addition, although the company joined in a lawsuit with other airlines (discussed later), FedEx ended up complying with the EBO after it decided not to follow through with a rumored threat to move its operations to the nearby Oakland Airport. To begin its new contract with the City at its new airport facility, FedEx had to comply. But its effort was extremely slow. The company was about to move into its new airport building in 1999 when the HRC reminded FedEx and the director of the airport that compliance was required before any move could be made. The company began its move anyway, despite not being in compliance.

<sup>14</sup> HRC *Six Month Report*, p. 11-12.

<sup>15</sup> HRC *Fourth Year Report*, p. 6.

<sup>16</sup> Frank McCoy. 1998. "Banned in San Francisco." Washington: *U.S. News & World Report*, April 6.

San Francisco represented an important market for the company, and FedEx would have lost business with the City and possibly some other local business if it had closed its San Francisco Airport facility. In an effort to defuse the situation at the new airport, the Commission's compliance manager coaxed FedEx into gaining provisional compliance by filing necessary paperwork and by beginning the process of equalizing the benefits required by a court ruling. Ultimately, Federal Express complied with the EBO, but in the limited manner set out by the Court, as explained below.

Another prominent employer that resisted the perceived government intrusion was United Airlines. The lawsuit led by United is discussed in depth below, but in 1999 United's then-CEO, James Goodwin, stated that his company was opposed to municipalities "attempting to legislate the employee benefits packages of companies like airlines doing business nationwide."<sup>17</sup>

When San Francisco's leaders realized the types of political and legal issues they were facing after passage of the EBO, Supervisor Leslie Katz played an important role in gaining the backing of the local business community. In an interview, she noted that coalition building was critical in gaining the support of business leaders and recalled that she met with members of the Chamber of Commerce sometimes once or twice a week during the early months after passage. The Chamber was very much an ally in addressing some of the implementation issues, including the health insurance problems mentioned earlier. Katz met with outside lawyers who were experts on federal retirement plan law (ERISA) to learn about what could and could not be done under ERISA in an effort to guide contractors.<sup>18</sup> She also attended meetings to answer questions and address the concerns of businesspeople. By gaining as much support for and compliance with the EBO as possible, City leaders hoped that fewer objectors would resort to the Courts. Some contractors took their fight to the courts anyway.

#### *Legal Objections and ERISA Challenges.*

Both the City's politicians and officials were concerned about legal challenges to the EBO even before passage. Because Geoff Kors and Leslie Katz are attorneys, and because Carol Stuart had legislative experience, they addressed many potential problems in the original legislation. (Later legislative amendments addressed changes to the EBO that the courts required.)

Soon after passage, three lawsuits were brought against San Francisco. The Air Transport Association (ATA), the trade association that represents the largest U.S. airlines, brought the most credible challenge (the suit was led by Federal Express and included United and other airlines). First, they argued that ERISA (the Employee Retirement and Income Security Act) preempted the EBO's requirements since federal law supersedes state and local law when there are conflicts.<sup>19</sup> Second, the ATA claimed that both the Airline Deregulation Act and the Railway Labor Act also preempted the EBO. Third, the ATA alleged that the EBO itself violated the U.S. Constitution's Due Process and Commerce Clauses by requiring a contractor to change its policies outside of San Francisco, and violated sections of both the California Constitution and the San Francisco City Charter.

A partial decision in the ATA case limited the jurisdictional reach of the ordinance in 1998.<sup>20</sup> Federal District Court Judge Claudia Wilken ruled that under the U.S. Constitution's Commerce Clause the City may only require compliance at a contractor's operations (1) in San Francisco;

<sup>17</sup> Quoted in John Bacon. 1999. "Domestic Partners." Arlington, VA: *USA Today*. August 2. UMI Re. No.: SA-2693-77.

<sup>18</sup> A court ruling ultimately caused the Board of Supervisors to amend the EBO in relation to ERISA.

<sup>19</sup> ERISA is the federal statute under which large employers (those that "self-insure" their health claims) and health plans (HMOs, PPOs, etc.) have found protection from malpractice, damage, and injury lawsuits because its preemption of other laws is very broad. ERISA has provided a great deal of autonomy and control to employers. This situation began to change somewhat in the mid-to-late 1990s via some state laws and court decisions. ERISA also governs many other employer benefits, including pension plans.

<sup>20</sup> HRC *Two Year Report*, p. 16. The case: *Air Transport Association, et al. v. City and County of San Francisco, et al.*, 992 F. Supp. 1149 (N.D. Cal 1998).

(2) on property owned or legally occupied by the City outside San Francisco; and (3) outside San Francisco where a contractor performs work related to a city contract. The Court also stated that when the City acts as an ordinary consumer of goods and services, the City may require that all benefits be equalized. However, when the City is contracting as a regulator—such as at its airport, because it owns the airport in a situation akin to a monopoly—ERISA preemption applies. In other words, as a regulator, the City may not require its contractors to end discrimination in the provision of insurance and retirement benefits, which are governed by ERISA. However, benefits not governed by ERISA must still be extended to employees equally, including bereavement leave, family medical leave, and flight discounts.<sup>21</sup> As of June 30, 2002, only 95 employers complied with the EBO by offering the more limited set of benefits allowed by this ruling.

The airlines appealed the decision to the U.S. Ninth Circuit and attempted to gain an injunction against having to equalize the non-ERISA benefits until the appeal was heard. On the same day their injunction attempt failed, July 30, 1999, United Airlines announced that it would extend benefits to same-sex domestic partners worldwide.<sup>22</sup> American Airlines soon followed. United would provide benefits to different-sex partners only in San Francisco, noting that the different-sex partner benefits may later be withdrawn if permitted by the Court.<sup>23</sup> In United's case, "same sex partners of United employees and retirees nationwide...gain[ed] access to medical and dental coverage, dependent life insurance, pension survivor benefits, bereavement leave, travel passes, and other perquisites."<sup>24</sup> Federal Express, on the other hand, never provided health and pension benefits to domestic partners, and limited its compliance in other benefits to San Francisco only. The airlines eventually lost their appeal in December 2001 and did not appeal to the U.S. Supreme Court.<sup>25</sup>

The two other court challenges came from the religious right. Both cases involved attorneys from the non-profit legal organization, the American Center for Law & Justice, which is associated with Pat Robertson. P.M. & M. Electric was one plaintiff. Though it had not sought a city contract, P.M. & M. brought suit claiming that it would be denied a contract were it to pursue one because the company would not comply with the EBO requirements. Other reasons for suing were similar to those in the ATA case. The court dismissed the suit, arguing that P.M. & M. did not have standing to file a lawsuit, since the company had never actually sought a city contract.<sup>26</sup>

The other lawsuit's plaintiff was S.D. Myers, an Ohio Company that claimed it had been denied a city contract because it refused to comply with the EBO on religious grounds. In addition to the same arguments raised by the airlines under ERISA and the Commerce Clause, Myers argued that "California's marriage and community property laws...override the City's ability to enact legislation that protects the rights of domestic partners and spouses."<sup>27</sup> Myers lost in District Court (under Judge Wilken) and on appeal in June 2001.<sup>28</sup>

<sup>21</sup> John Bacon. August 2, 1999. "Domestic Partners." Arlington, VA: *USA Today*. UMI Re. No.: SA-2693-77. A San Francisco official noted that, under the Airline Deregulation Act, the Court recognized a potential exemption regarding the provision of non-ERISA benefits. If the airlines could demonstrate that provision of those benefits imposed a burden so great that it would force them to alter their routes, they would not have to equalize non-ERISA benefits. The airlines could not meet the legal burden for this exemption, however, and the Court required equalization.

<sup>22</sup> United may have also been responding to pressure from a boycott organized against it for refusing to provide domestic partner benefits, though they denied that the boycott had an effect. Jeff Sheehy organized the boycott within the Harvey Milk Club, then he organized Equal Benefits Advocates as its home. The boycott was joined by the Human Rights Campaign and the Victory Fund, and demonstrations were also organized. This information was gathered primarily through a conversation with Jeff Sheehy.

<sup>23</sup> HRC, *Two Year Report*, p. 16-17.

<sup>24</sup> Susan Carey. "UAL Decides to Extend Partner Benefits From Bay Area to Workers Nationwide." New York: *Wall Street Journal*. August 2, 1999. UMI Article Re. No.: WSJ-3516-32.

<sup>25</sup> HRC *Fourth Year Report*, p. 7; information also gathered through conversations with city officials.

<sup>26</sup> HRC *Six Month Report*, p. 13.

<sup>27</sup> HRC *Two Year Report*, p. 18.

<sup>28</sup> Will O'Bryan. *The New York Blade* "Court Upholds Equal Benefits in San Francisco." June 22, 2001. p. 10.

While the appellate court affirmed Judge Wilken's earlier rulings against both the airlines and Myers, the Court remanded to Judge Wilken a new claim that the parties had raised for the first time on their appeal, that AB 25, the new state domestic partnership law, preempts the EBO.<sup>29</sup> In June 2002, the court rejected the claim of state law preemption.<sup>30</sup> The airlines decided not to appeal and ended their case against the City. Myers appealed on the issue of AB 25, lost in July 2003, and was later denied a rehearing.

The City very quickly marshaled its legal resources in order to stave off threats to the EBO. The City Attorney's Office, members of the Board of Supervisors, the Human Rights Commission, the Mayor's Office, individual activists, and civil rights organizations responded quickly and effectively. The ACLU and the Lambda Legal Defense and Education Fund filed several amicus briefs and helped the City Attorney's Office on many occasions. The National Gay and Lesbian Task Force (NGLTF), though not a legal organization, also helped with strategizing and fact gathering.<sup>31</sup> The City's success in fending off these legal challenges got the EBO over the largest potential barrier. The legal decisions also establish potentially important precedents for defending equal benefits laws in other jurisdictions.

#### *D. Implementation Issues for Specific Benefits<sup>32</sup>*

Beyond the lawsuits, the implementation of the EBO spanned many issues because of the range of benefits that employers provide. The Human Rights Commission had to become familiar with numerous state, local, and federal laws governing benefits in order to properly certify contractors and to avoid formulating rules that conflicted with laws. Of course, the implementation of the EBO was complicated because the new law imposed potentially costly requirements on contractors. Those costs to contractors are discussed in detail in Part Two of this report. This section focuses only on administrative issues.

##### *Pension and Retirement Plans.*

Equalized benefits include the provision of pension and retirement benefits to domestic partners when such benefits are offered to spouses. Many laws govern retirement plans, however, and employers are not required to make changes that contradict the law. In addition, outside companies or systems that manage and sell pension plans may not allow certain changes. Another example of a potential complication is the legal requirement that a qualified domestic relations order (QDRO) be obtained before re-assigning certain benefits from a spouse to another payee.<sup>33</sup>

Some common spousal retirement benefits that must be equalized include death benefits to the spouse of an employee, benefits provided to the spouse upon the employee's retirement, including annuities, and spousal consent requirements. Employers are allowed to adopt workaround solutions for equalizing pension and retirement benefits, as well, that include strategies such as purchasing special annuities or insurance policies for domestic partners. Goldstein notes that smaller employers tend to have more difficulty finding flexible pension plans, as they tend to rely upon packages developed by outside financial companies.

<sup>29</sup> Arthur S. Leonard. September 11, 2001. "San Francisco Contractor Benefits Law Survives Another Airline Challenge." *Lesbian & Gay New York*, p. 12. Also, conversations with City officials.

<sup>30</sup> The parts of AB 25 related to employer issues are "the exemption of domestic partner health insurance benefits from state income taxation, the right to use employer-sponsored sick leave to care for an ill domestic partner or child of a domestic partner, and the requirement that health insurers doing business in California offer domestic partner coverage whenever spousal coverage is offered." (HRC *Fourth Year Report*, p. 6.) Since this law addresses DP issues related to employment, and its effects are far less comprehensive than the EBO's, preemption would have gutted the EBO. (Conversation with city official.)

<sup>31</sup> These outside organizations have been highly praised by several City officials for their quality work.

<sup>32</sup> See HRC Fact Sheets on pension plans, family and medical leave, bereavement, confidentiality, nondiscrimination in employment, taxation (for employers), tax consequences (for employees), affidavit of domestic partnership, tax consequences, and governmental domestic partner registries at [www.sfgov.org/site/sfhumanrights\\_index.asp](http://www.sfgov.org/site/sfhumanrights_index.asp).

<sup>33</sup> See the Human Rights Commission's Pension Plan Fact Sheet at the website in footnote 32.



*Family and Medical Leave and Bereavement Leave.*

Both the Family and Medical Leave Act of 1993 (FMLA) and the California Family Rights Act of 1991 regulate when and for how long an employee may take a leave of absence from work and be guaranteed the right to return. The same family and medical leave rights must be extended to employees with domestic partners that are provided to employees with spouses. Bereavement leave must also be equally applied.

*Confidentiality and Nondiscrimination.*

As employers provide equal benefits, they might learn sensitive information about employees and their domestic partners. Sometimes this information can lead to prejudicial treatment, if disclosed improperly. Therefore, the HRC advises employers to develop confidentiality policies. San Francisco also requires its contractors to certify that they practice nondiscrimination in employment with respect to sexual orientation and to domestic partnership. Contractors must sign statements to this effect.

*Notification of Domestic Partner Benefits and Qualification for Benefits.*

Employees must be notified of the availability of domestic partnership benefits. A contractor may recognize San Francisco's domestic partnership registration, or other state or local registrations. If no such laws are in force, the contractor may institute an internal domestic partnership registry for employees to use for qualification.

*Additional Taxes for Employees.*

The HRC recommends that employers advise employees who select partner benefits that the monetary value of the employer contribution to those benefits is reported to the IRS as taxable income to the employee. In the case of health insurance, if the employer does not pay any of the premium, which is sometimes the case, then the employee's taxes will not increase. Under the new California state domestic partnership law (AB 25), domestic partner health insurance benefits are exempt from state income tax, but the much higher federal tax is not affected.

**E. Contracting Waivers**

As with any set of contractor requirements, the Human Rights Commission had to set out procedures for granting legal exceptions to the EBO. Waivers are common in government contracting, but the EBO brought some new waivers and procedures into the City's process that required adaptation by the City's purchasers and administrators. The Commission published a waiver reference guide for purchasers as part of its implementation effort.

The Human Rights Commission may issue a waiver to a non-compliant entity for the six reasons shown in Box 2, but only after attempts have been made to find compliant contractors. The first three waivers—emergency, public entity, and sole source—are standard for all City contracts that are subject to the Commission's purview. Waiver type four covers bulk purchasing arrangements made by other governmental entities that can benefit San Francisco. Type five allows a purchase to be made when no contractors are willing to comply with the EBO.<sup>34</sup> The sixth type of waiver allows the City to avoid contracting with a company set up to evade the EBO. In December 1997, the Ordinance was amended to shift the power to grant waiver types four through six from the Board of Supervisors to the Commission.<sup>35</sup>

<sup>34</sup> There are several other waivers to the EBO that do not fall under the purview of the HRC. These waivers can occur: (a) when the EBO's requirements conflict with a previous grant, subvention, or agreement with a public agency; (b) at the discretion of the Board of Supervisors; (c) in regard to the investment of trust moneys and related agreements; (d) in relation to investments in U.S. government securities or pre-existing investment agreements, or when the City Treasurer feels that no compliant entity is capable of performing the desired transaction, or when the City will incur a financial loss that would violate the Treasurer's fiduciary duties (the money must be withdrawn as soon as possible, unless it is a U.S. government investment); (e) for important Public Utility Commission contracts needed for reliable service if the competitive bidding process does not yield a compliant contract.

<sup>35</sup> HRC *Five Year Report*, p. 8.

During the first six months of implementation, the HRC realized that the largest proportion of waiver requests was for sole source purchases. Many of these purchases would always be sole source, would be done routinely, and originated from more than 20 different city departments. Examples include items such as professional journal subscriptions, government permits, and licensing fees.<sup>36</sup> Filing and processing the waiver requests was very time consuming for both the contracting officers and the HRC. In the third year, for example, there would have been 956 such requests.<sup>37</sup> Therefore, the Commission established what they called a “blanket sole source waiver” form, which is a self-executing, fast-track waiver for sole source purchases that fit a predetermined type. If a contract officer’s request fits the criteria on the form, he or she can simply file the waiver with the HRC, and no further approval or paperwork is needed. Nearly all of these waivers are for single transactions.<sup>38</sup> To prevent abuse of the system, such waivers were restricted to contracts worth less than \$250,000, subjecting larger dollar contracts to the full HRC compliance review.<sup>39</sup>

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## Box 2: EBO Contracting Waivers

**1. Emergency** – a contractor is needed to respond to an emergency that endangers the public health or safety, with insufficient time to go through a bidding process, and no compliant contractors available. For example, a construction contractor is needed to do emergency sewer repairs.

**2. Public entity** – a good or service of superior “quality or accessibility” to what can be found in the private sector is needed from a public entity. For example, training offered by a state university, or transportation passes from a regional transit authority.

**3. Sole source** – a needed good or service is available from only one source, when that source is not otherwise disqualified from city contracting. Examples include one manufacturer of a proprietary software product, or spare parts needed for an existing proprietary machine with no secondary suppliers.

**4. Government bulk purchasing arrangements** – a contract negotiated via a federal, state, or regional entity that benefits the City due to reduced prices. For example, the state negotiates a contract with a manufacturer for an overhaul of its computer systems and municipalities can share the same low contract price.

**5. No potential contractors are compliant** – a good or service that is essential to the City is available from more than one contractor, but none is willing to comply with the EBO. For example, there are only three manufacturers of a replacement part, with no vendor willing to undergo the compliance process in order to sell the product to the City. The purchaser and department head may then choose a vendor and request a waiver.

**6. Sham/Shell Entities** – a waiver for a noncompliant contractor can be issued because the only available compliant contractor was established to conduct business with the City in order to evade the spirit of the EBO (see discussion of intermediaries in part two of this report). For example, suppose a shell distributor for plumbing supplies purchases parts from a noncompliant parent company and offers to sell them to the City. If no other compliant source for the product exists, the City purchaser and department head involved may request a waiver to purchase from a non-shell supplier that is not EBO-compliant in order to avoid rewarding the company that attempted to evade the law.

Sources: See HRC *Six Month Report*, p. 10, and “Quick Reference Guide to Human Rights Commission Waivers,” printed by the HRC. See also the Chapter 12B of the City’s Administrative Code.

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<sup>36</sup> San Francisco HRC. *Six Month, Two Year, Three Year, and Fourth Year Report on The San Francisco Equal Benefits Ordinance*. January 6, 1998, p. 12, August 12, 1999, p. 13 and footnote 19, August 10, 2000, p. 8 and footnote 12, and October 25, 2001, p. 5 and footnote 10, respectively.

<sup>37</sup> HRC *Three Year Report*, p. 8.

<sup>38</sup> According to Cynthia Goldstein at the HRC, it is possible that a self-executing blanket waiver could be filed for a blanket contract covering multiple purchases from a noncompliant sole source vendor. Blanket contracts are generally for a single year and renewed, if needed. A few blanket contracts may have been waived via the self-executing blanket form, but, among those, very few, if any, were contracts for more than a one-year term. (Correspondence with Goldstein.)

<sup>39</sup> Goldstein also noted that the HRC hopes that the \$250,000 cap for blanket waivers can be lowered if the HRC staff allocation is increased, which would allow for closer and more frequent review.

“Sham” or “shell” distributors, also called intermediaries, presented a challenge to the City. These businesses are allegedly EBO-compliant brokers of goods produced by non-compliant companies that want to do business with the City. The problem of intermediaries is best understood by examining the potentially conflicting interests built into the situation. As discussed in Part Two of this report, goods and services purchased through an intermediary are likely to be more expensive due to a “middle man” markup. City politicians and the HRC have an interest, therefore, in avoiding intermediaries because they skirt the law while increasing municipal contracting costs. City purchasers’ incentives are to obtain the best quality goods or services for the best price, but within time constraints and numerous legal contracting requirements. The sixth waiver type gives purchasers a way to avoid intermediaries, but exposing an intermediary and having the department head request a waiver to contract with a non-compliant, legitimate entity could take a purchaser time.

As of the 2001 HRC report, no sham waivers had been requested or granted, but it is impossible to say whether waivers should have been requested. The HRC knows of no evidence that purchasers are purposely buying from intermediaries.<sup>40</sup> Anecdotal evidence suggests that over time intermediaries tend to disappear because competition increases to squeeze out the markup, which would mitigate the problem of sham companies. Furthermore, government contracting may be profitable enough to convince companies to comply. Once a company in a sector complies, others may well follow, in order to maintain their competitiveness.

### *F. Processing Thousands of Compliance Requests*

The EBO was a very large undertaking for the City, its agencies, contractors, and political leaders. After the rulemaking portion of the process was completed, the next big challenge was processing the thousands of compliance requests. On March 24, 1997, the City mailed information and compliance forms to approximately 12,000 past contractors and entities that were interested in providing goods or services for the City. In the six-month period after the June 1, 1997, effective date, the HRC received over 6,000 telephone calls (over 30 calls per day) and 5,484 total compliance requests.<sup>41</sup> By June 30, 1999, 8,005 contractors had submitted compliance paperwork, and by June 30, 2001, 10,110 had done so. The staff then had to learn and review all of the intricacies of pension and medical plans and other types of benefits. However, the HRC quickly tackled its initial backlog in processing.<sup>42</sup>

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<sup>40</sup> According to Goldstein.

<sup>41</sup> HRC *Six Month Report*, p. 8.

<sup>42</sup> Ibid., pp. 8,11, *Two Year Report*, p. 9, *Three Year Report*, p. 5. See also the *Fourth Year Report*, October 25, 2001, p. 2.

Over time, the processing tasks evened out and new filings declined. In both 2000 and 2001, the number of new compliance applications filed was just over 1,000; in 2002, just over 1,100. The figures on the HRC's processing of compliance paperwork in Table 1 indicate that by the third year of the EBO's life, compliance and certification patterns had begun to stabilize. From a bureaucratic perspective, this stability allows administrators to plan their workloads for reviewing and processing paperwork. The processing trend also demonstrates to other cities that it is possible to have a stable system in place after two and one-half years. Perhaps, informed by the lessons learned from San Francisco, that timeline to a stable bureaucratic system could even be reduced.

**Table 1: Cumulative Review Processing Statistics**

	6/1/97– 11/30/97		FY 1998–99		FY 1999–00		FY 2000–01		FY 2001–02	
	No.	%	No.	%	No.	%	No.	%	No.	%
<b>Finalized</b> .....	3,269	59.6	5,501	68.7	6,470	71.4	7,299	72.2	8,163	72.7
<b>Pending</b> .....	2,172	39.6	2,404	30.0	2,538	28.0	2,775	27.4	3,026	26.9
<b>Backlog</b> .....	43	0.8	100	1.2	57	0.6	36	0.4	44	0.4
<b>TOTAL</b> .....	<b>5,484</b>	<b>100.0</b>	<b>8,005</b>	<b>100.0</b>	<b>9,065</b>	<b>100.0</b>	<b>10,110</b>	<b>100.0</b>	<b>11,233</b>	<b>100.0</b>
<b>New Compliance Requests</b> .....	—	—	2,521	—	1,060	—	1,045	—	1,123	—

NOTE: All data derive from the HRC 6-Month, 2-Year, 3-Year, 4-Year, and 5-Year reports.

Table 1 also suggests that the Commission processed paperwork efficiently. Of course, much was at stake, since bureaucratic delays would both irritate contractors and slow down the workings of city government. As Table 1 shows, the HRC never had a large backlog. By 2002, it was 0.4% of all applications, down from 1.2% in 1999.

Though backlog has not been a problem, Table 1 shows that there are substantial numbers of pending applications (pending is processed, awaiting disposition). In June 2002 (the fifth year in Table 1), pending applications represented 27% of all applications, but this figure steadily decreased from 39.6% in January 1998. In its reports, however, the HRC explains that the vast majority of pending applications are ones for which the Commission requested more information but had not yet received a response. Many of these potential contractors are not likely to take further action on their compliance applications because they are probably no longer seeking a city contract (for example, they lost their bids).<sup>43</sup>

Overall, these processing figures suggest that a municipality following a similar process can expect to face a heavier demand on staffing in the first couple of years. Over time, the number of new applications tapers off. In addition, Goldstein reports that her staff is busy at all times, but that the beginnings and ends of fiscal purchasing years, along with state and federal spending deadlines, bring heavier contracting activity. After June 1, 1997, the HRC had approximately five full-time equivalent staff (FTE) working on contractor compliance, which includes clerical staff and interns. Goldstein believes that staffing has never been high enough. The San Francisco experience suggests that for a city of comparable size, more than five FTE staff would likely be beneficial. Other cities might also plan for an optimal level of staffing by shifting some employees onto and off the project as busy times come and go.

<sup>43</sup> Ibid., p. 2.

### 3. ENFORCEMENT

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Enforcement and the ability to impose sanctions improve the chances that laws will be obeyed. The EBO legislation gave the City several enforcement tools to use against non-compliant contractors. The department that issued the contract can fine a contractor \$50 per day per person suffering discrimination until the situation is corrected. The City can also withhold payments and can seek remedies for breach of contract, if necessary. A contractor can even be “de-barred” from contracting for up to two years if the HRC issues a finding of discrimination. The sanctions at the disposal of the City, therefore, are strong.

The HRC may be alerted to possible violations through employee complaints, although there have been only a few instances where employees have come forward. Such complaints can be investigated fairly easily because the HRC knows what benefits the contractor offers from the information gathered during the compliance evaluation. If a non-compliance claim is filed, a resolution can be mediated or heard by the Commission. The Human Rights Commission Director or other designated official is responsible for issuing findings of discrimination under the City’s Administrative Code, Chapter 12B. The department involved in the contract imposes any penalties. A contractor may appeal to the Commission, at which point the Human Rights Commissioners will send the case to hearing officers. However, the Commission has yet to issue an EBO-related finding of discrimination.<sup>44</sup>

Since the HRC compliance evaluation process is comprehensive and requires detailed documentation of equalized benefits, with a contract award dependent upon completion of many steps, the opportunities for evading the law are few. The detailed documentation employed by the City also makes the enforcement process easier to carry out should questions arise. Several other cities with equal benefits requirements depend upon a “self-certification” system, with no agency established to oversee the details of the process. In comparison, the San Francisco method is likely to yield greater overall compliance.

### 4. MAINTAINING LEGISLATIVE INTENT: OVERSIGHT OF THE PROCESS

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Legislative bodies generally delegate rulemaking and implementation of laws to the executive branch, as was the case with the EBO. Enforcement of laws (discussed in the previous section) is also traditionally an executive branch function. Therefore, with rulemaking, implementation, and enforcement all under the mayor, the only way the Board of Supervisors can be certain that its wishes are being carried out is through oversight of the program. Oversight processes were specified in the EBO, but before discussing them, a brief description of different styles of oversight often employed by legislators is useful for thinking about options that other cities contemplating an EBO might consider.

Legislative oversight is similar at the federal, state, and local levels. Two observers of the federal process have identified two basic types of oversight—“fire alarm” and “police patrol.” “Fire alarms” are sounded through complaints from constituents, who have access to agency decisions through “a system of rules, procedures and information practices” which Congress has required the agency to set up. Government operations are opened up to the “sunshine” for public inspection in this bottom-up approach. With “police-patrol” oversight, Congress samples agencies looking for “violations of legislative goals” in two basic ways: through regular sampling and assessment

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<sup>44</sup> Communications with Cynthia Goldstein of the HRC.

of programs or through sporadic, possibly random, checks.<sup>45</sup> This second style of oversight is top-down and preventive in nature. Logically, a combination of the two would be more likely to catch problems than either used alone. Oversight of the EBO has primarily followed the fire alarm method even though the law was written to employ a policing approach as well.

The EBO's enabling legislation only called for the Human Rights Commission to make quarterly reports to the Board of Supervisors on the use of three types of waivers: bulk purchasing waivers, waivers made to avoid contracting with sham/shell corporations, and waivers granted when no compliant bidder is available. City contracting officers who initiate these waivers are also to appear before the Board each quarter to report on the use of these waivers—a policing form of oversight. The Board has not required any quarterly department head appearances, however, nor has it performed formal oversight of waivers.<sup>46</sup> Therefore, unless a problem comes to the attention of the Board via an HRC quarterly report, the supervisors would not likely know of problems unless a fire alarm were pulled by the public.

For better or worse, many busy legislatures that tend toward the fire alarm style of oversight remain uninvolved until an issue arises that demands attention. For example, Supervisor Tom Ammiano found out that a very large, non-compliant engineering company (Bechtel) was bidding to fix the City's sewers. Ammiano asked the Public Utilities Commission to hold a hearing on the matter. At the hearing, the company's president enthusiastically testified that the company would comply.

Jeff Sheehy, one of the activist authors of the EBO, expressed concern about the potential for abuse of sole source waivers. He worried that the Board was not examining waivers sufficiently and was neglecting its oversight role. Sheehy, along with others, pushed for more sunshine on the process. When asked about Board oversight, Supervisor Katz agreed that the Board had not done much, but she praised the role of the Human Rights Commission in overseeing other City agencies. Infrequently, the Board had been called upon to review large contracts—which is its role—but no large, non-compliant contracts had been granted according to Katz, who also noted that the HRC had empowered department heads to issue warnings if a contractor appeared to be an “intermediary.” Goldstein pointed out that the City Controller monitors payments to contractors to make certain that the contractor is compliant (or has been issued a waiver), and the Controller also performs annual audits. City purchasing departments monitor contracts for compliance and waivers, as well.

One area that might benefit from greater oversight by the Board of Supervisors concerns the issue of intermediaries. As noted in a previous section and in Part Two of this report, intermediaries formed to broker goods from non-compliant companies might increase the City's contracting costs. City purchasers have little incentive to expose the intermediaries. Without the Board of Supervisors looking into the matter, neither purchasers nor city department heads have enough incentives to firmly eschew intermediaries. The HRC may not be alerted to violations because it is not charged with that kind of oversight role, and the Commission may not be getting enough information on such contracts from purchasers.

<sup>45</sup> Matthew D. McCubbins and Thomas Schwartz. 1984. “Congressional Oversight Overlooked: Police Patrols versus Fire Alarms.” *The American Journal of Political Science* 28:165-79.

<sup>46</sup> Cynthia Goldstein was asked if oversight of waivers had been performed. She responded that it had not.

## 5. DID THE EBO ACHIEVE ITS GOALS AT A REASONABLE COST? ASSESSING OUTCOMES

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Outcomes are chosen measures that reflect the degree to which the rules, processes, and supporting activities of City officials, at all levels, facilitated the attainment of the legislation's goal: the equalization of domestic partner and spousal benefits provided by the City's contractors. This section evaluates outcomes at several different levels by examining the EBO's impact on the City, on employers, and on employees. The main measures are data on City costs, employer compliance, and partner health insurance coverage. (The potential impact of the EBO on contracting costs is analyzed more extensively in Part Two of the report.) While it is customary to perform an intermediate- and long-term evaluation, such a convention is not as helpful from a retrospective viewpoint. Therefore, outcomes will be discussed for the entire period of June 1, 1997 through June 30, 2002.

### *A. Administrative, Legal, and Other Costs of Implementation*

*Administrative Costs.* As the earlier discussion of implementation and enforcement made clear, the City incurred some costs to put the Equal Benefits Ordinance into practice. The biggest administrative costs to the City have been the five full-time equivalent staff working on contractor compliance at the HRC, which includes clerical staff and interns. Using a hypothetical average salary of \$45,000 per year per employee to estimate the city's cost for those five employees (interns, paid or unpaid, would greatly reduce the average), the salary costs would be approximately \$288,000 per year, including fringe benefits of 35% for 4 employees (interns would not have fringe benefits). If anything, reports from the EBO manager at the HRC would indicate that staffing has been too low, implying that administrative costs are under control or possibly too low.

The City Controller, Edward Harrington, stated that he does not track EBO-related costs. He mentioned upfront that many have questioned this lack of information about EBO costs, but he reiterated that he does not track them. Harrington also stated that no department other than the Human Rights Commission added staff to accommodate the new EBO requirements, but the ordinance increased the workload of all departments and might have affected other administrative costs to some extent.

*Legal Costs.* It has not been possible to document the legal costs to the City in defending itself against the EBO lawsuits, but interviews with City officials revealed that the City intended to win and, therefore, did not economize on its defense. The San Francisco Airport budget paid for the defense against the ATA/airlines case, and the City's general fund paid for the S.D. Myers defense, which was much less expensive and involved than the ATA case. The ATA case ran about five years, ending in June 2002. S.D. Myers is complete, unless it is appealed to the U.S. Supreme Court.

*Competitive Costs.* From an economic perspective, purchasing and contracting costs may have risen for the City because of the EBO for a variety of reasons, explored in Part Two of this report. The City Controller suggested that higher expenditures could have occurred theoretically, but he had no hard data for an analysis.

### *B. Contractors Providing Equalized Benefits*

The compliance rate—the number and percentage of contractors that comply by equalizing their benefits—over time is a very important measure of the effectiveness of the EBO. A contractor is considered compliant under three scenarios: (1) Sole proprietors (no employees to receive benefits) are compliant after filing the required paperwork; (2) Contractors that do not offer *any* benefits (usually small contractors) and those that *do not offer spousal* benefits must fill out the required paperwork, and are then considered compliant after review; and (3) contractors that offer spousal benefits must fill out paperwork and supply the City with extensive evidence that all of their benefits

to spouses are equally offered to domestic partners and vice versa. The contractor must offer benefits to *both* same-sex and different-sex partners, and recognize all domestic partners registered with a state or local governmental registry.

Table 2 presents compliance statistics for the first six months of the ordinance and for the three subsequent years, as has been done in the HRC's yearly reports. The data are reported by the City in a cumulative manner, so each year's count includes the counts from the previous years.

**Table 2: Cumulative Contractor Compliance Statistics**

	6/1/97 – 11/30/97		FY 1998–99		FY 1999–00		FY 2000–01		FY 2001–02	
	No.	%	No.	%	No.	%	No.	%	No.	%
<b>By Offering Equal Benefits.....</b>	1,270	42.8	2,328	45.6	2,788	46.3	3,157	46.3	3,501	45.6
<b>By Offering No Benefits .....</b>	1,080	36.4	1,682	33.0	1,889	31.3	2,044	29.9	2,216	28.9
<b>Sole Proprietor.....</b>	616	20.8	1,091	21.4	1,348	22.4	1,623	23.8	1,952	25.5
<b>COMPLIANT (out of all finalized) ..</b>	<b>2,966</b>	<b>90.7</b>	<b>5,101</b>	<b>92.7</b>	<b>6,025</b>	<b>93.1</b>	<b>6,824</b>	<b>93.5</b>	<b>7,669</b>	<b>93.9</b>
<b>Not Compliant .....</b>	303	9.3	400	7.3	445	6.9	475	6.5	494	6.1
<b>TOTAL REQUESTS FINALIZED .....</b>	<b>3,269</b>	<b>100.0</b>	<b>5,501</b>	<b>100.0</b>	<b>6,470</b>	<b>100.0</b>	<b>7,299</b>	<b>100.0</b>	<b>8,163</b>	<b>100.0</b>

NOTE: All data derive from the HRC 6-Month, 2-Year, 3-Year, 4-Year, and 5-Year reports.

The first three rows in Table 2 show how many employers complied under each of the three compliance categories from June 1997 through the end of fiscal year 2001–02. The fourth line shows that compliance levels began very high and leveled off even higher, at just under 94%, representing 7,669 contractors. Very importantly, 46% of those 7,669 employers complied by equalizing benefits, which suggests that the EBO is achieving its primary goal. The proportion of compliant employers not offering spousal or DP benefits has decreased over time, from 36.4% in the first six months to 28.9% in the fifth year. Approximately 6% of contractors remain non-compliant, and that proportion has fallen over time from just over 9%.

The increasing numbers and percentages of employers offering equal benefits mean that employers do not appear to be dropping spousal benefits to qualify for contracting. Improvements in the health insurance marketplace for DP coverage may have contributed to the increase in the percentage of contractors offering DP benefits. Finally, the requirements of the EBO do not seem to have discouraged smaller employers from contracting with the City. The HRC reports that by the fifth year 93% of compliant entities were small contractors with fewer than 500 employees. Five percent were medium sized contractors (more than 500 and fewer than 5,000 employees), and only 2% were large companies of 5,000 or more employees.<sup>47</sup> These proportions have remained stable over the five years.

### *C. Avoidance of Equal Benefits Through Contractor Waivers*

Since the goal of the EBO is to encourage employers to offer domestic partner benefits, successful implementation would result in the fewest waivers possible and a declining trend in waiver usage over time. Increasing or stable numbers of waivers would imply that contractors are able to avoid equalizing benefits and, therefore, to subvert the EBO goal. Box 2 explicitly spelled out allowable exceptions. Table 3 presents data for the City's use of waivers by type for each year, as is presented in the HRC's yearly reports. (Note that unlike Table 2, the figures in Table 3 refer to specific contracts, not specific contractors.)

<sup>47</sup> HRC *Five Year Report*, p. 4. Fifty-seven contractors did not supply an employee count. The denominator for the percentages excludes those 57.



**Table 3: Waivers by Fiscal Year and Type of Waiver**

	FY 1997-98 <sup>†</sup>		FY 1998-99		FY 1999-00		FY 2000-01		FY 2001-02	
	Approved	Denied	Approved	Denied	Approved	Denied	Approved	Denied	Approved	Denied
<b>Sole Source</b> .....	520	56	284	8	282	14	293	10	1,154 <sup>∞</sup>	13 <sup>∞</sup>
<b>Blanket Sole Source</b> .....	781	-	994	-	956	-	840	-	∞	∞
<b>Public Entity</b> .....	42	-	33	-	40	-	26	1	31	-
<b>Sham/Shell Entity</b> .....	-	-	-	-	-	-	-	-	-	-
<b>Bulk Purchasing</b> .....	1	-	-	-	1	-	1	-	-	-
<b>Multiple Non-compliant</b> .....	43	-	66	-	90	-	54	2	72	3
<b>Emergency</b> .....	11	2	6	-	2	-	2	-	6	-
<b>TOTAL</b> .....	<b>1,398</b>	<b>58</b>	<b>1,383</b>	<b>8</b>	<b>1,371</b>	<b>14</b>	<b>1,216</b>	<b>13</b>	<b>1,263</b>	<b>16</b>

<sup>†</sup> San Francisco's fiscal years run from July 1 through June 30. Since the EBO became effective June 1, 1997, an extra month is included in the first fiscal year.

<sup>∞</sup> The HRC reported sole source and blanket sole source waivers together in the fifth year.

NOTE: All data derive from the HRC 6-Month, 2-Year, 3-Year, 4-Year, and 5-Year reports.

As can be seen from Table 3, the total number of waivers requested and granted has declined slightly each year, but by only 10% from the first year to the most recent year. After the first year, the number of sole source waivers decreased and then leveled off, while the number of blanket sole source waiver requests increased. The blanket waiver was designed to reduce the number of routine sole source requests, which it appears to have done. In their most recent report, the Commission combines sole source and blanket sole source waivers, but the combined number of 1154 is only 19 waivers higher than the previous year's combined number. Emergency and bulk purchasing waivers are rare. Public entity waivers occur more often, averaging about 34 per year. The sham/shell entity waiver, designed to bypass an intermediary company that was formed to evade the EBO, has not been used, although it is possible that some intermediaries received contracts. Finally, multiple non-compliant contractor waivers increased steadily through June 2000, but have decreased in use since then. Overall, more than 1,200 contracts are still awarded each year to non-compliant entities, but the vast majority of these are for blanket sole source contracts. Therefore, it is also logical to assess the dollars represented by the various types of waivers.

The amount of money represented by the waivers has not been analyzed before. The Human Rights Commission provided its waiver database to IGLSS for analysis, and total values of waived contracts are summarized in Table 4 by type of waiver and year. The bottom line of Table 4 below shows that the City purchased at least \$355 million from contractors with compliance waivers since the EBO came into effect (June 1, 1997) through November 2001.<sup>48</sup> This sum excludes sole source blanket waivers and missing dollar figures. (Blanket waiver dollars are not tracked in a database, but they are examined by the Commission to be certain they are not abused).<sup>49</sup> Although the total number of waivers has declined slightly but steadily over time (Table 3), the total waiver value has varied over time, making generalizations about changes impossible.

<sup>48</sup> This is when the waiver database that IGLSS received ended. The HRC data have been kept up-to-date, but due to the fact that the fifth year's waivers showed a leveling off of trends, there was no reason to extend the analysis over an even longer period.

<sup>49</sup> The HRC database did not show dollar figures for 164 waiver entries; two showed a one dollar amount, totaling 166 entries that are assumed missing. Goldstein points out that some of these missing dollar amounts may be due to the fact that, for those waived contracts, money was actually received by the City, such as in lease agreements. Out of necessity, these were considered missing data and excluded from numerical means. The grand total number of waivers in the database matched the published reports, but each year's total was somewhat higher or lower than the number in the published reports, owing to waiver approvals close to the yearly cutoff dates. Though the HRC keeps records according to the date of receipt of a waiver request, due to a much higher level of completion for the field showing the date action was taken on the waiver request in the HRC database, this latter date had to be used. This caused discrepancies, but overall, they were minor.

**Table 4. Waiver Dollar Amounts**

	\$ (in Thousands)	Mean <sup>∞</sup> \$ (in Thousands)
<b>BULK PURCHASING<sup>#</sup></b>		
FY 1997-98 <sup>†</sup>	153	153
FY 1998-99		
FY 1999-00	15	15
FY 2000-01	20	20
<i>Partial FY 2001-02*</i>		
<b>Subtotal</b>	<b>188</b>	<b>63</b>
<b>EMERGENCY</b>		
FY 1997-98	70	18
FY 1998-99	555	92
FY 1999-00	300	150
FY 2000-01	14	7
<i>Partial FY 2001-02</i>	<i>107</i>	<i>27</i>
<b>Subtotal</b>	<b>1,046</b>	<b>58</b>
<b>MULTIPLE NON-COMPLIANT</b>		
FY 1997-98	1,633	40
FY 1998-99	4,308	64
FY 1999-00	5,704	69
FY 2000-01	4,908	83
<i>Partial FY 2001-02</i>	<i>1,864</i>	<i>48</i>
<b>Subtotal</b>	<b>18,418</b>	<b>64</b>
<b>PUBLIC ENTITY</b>		
FY 1997-98	8,544	251
FY 1998-99	6,051	189
FY 1999-00	35,385	885
FY 2000-01	19,901	765
<i>Partial FY 2001-02</i>	<i>1,702</i>	<i>243</i>
<b>Subtotal</b>	<b>71,583</b>	<b>515</b>
<b>SOLE SOURCE</b>		
FY 1997-98	61,559	161
FY 1998-99	36,685	127
FY 1999-00	84,886	308
FY 2000-01	62,158	204
<i>Partial FY 2001-02</i>	<i>18,632</i>	<i>205</i>
<b>Subtotal</b>	<b>263,920</b>	<b>197</b>
<b>OVERALL MEANS, BY YEAR</b>		
FY 1997-98	71,960	155
FY 1998-99	47,599	121
FY 1999-00	126,291	314
FY 2000-01	87,000	221
<i>Partial FY 2001-02</i>	<i>22,306</i>	<i>158</i>
<b>TOTAL</b>	<b>\$355,155</b>	<b>\$199</b>

<sup>#</sup> The averages and sums are the same; there were only 3 bulk waivers granted, each in a different year.

<sup>†</sup> The SF fiscal year is from 7/1 to 6/30. Because the EBO became effective 6/1/97, year one includes 6/97.

<sup>\*</sup> The fifth year represents 7/1/01 to 11/11/01. (Many waivers are granted toward the end of the year.)

<sup>∞</sup> Means calculations exclude waivers for which dollar amounts are unknown.

Looking at trends within specific categories of waivers reveals some important patterns. Perhaps most interesting is that sole source waivers represent by far the largest dollar grouping. As of June 30, 2001, the City had spent just over \$245 million on these waivers. If the beginning of the fifth year is counted, the amount rises to more than \$263 million. Sole source waiver dollars spiked in the third year, but fell back to previous levels during the fourth year. There were more high dollar sole source contracts during the third year, as can be seen by the higher mean contract amount. In fact, five contracts represented over \$52 million in sole source waivers that year.

The figures in Table 4 cannot be used to predict whether sole source waiver dollars will decrease or rise in the future, but there is some evidence that they will remain fairly stable. This is because some of the largest dollar sole source contractors in the database may provide benefits close to what the EBO requires, but still not be compliant. Therefore, the sole source dollar levels will remain fairly high. (This situation occurs, to some extent, in the public entity category also.) For example, the HRC states that the University of California at San Francisco has received well in excess of \$70 million dollars in contracts over the years, provides domestic partner medical insurance and retirement benefits, but has not fully equalized benefits for different-sex partners. The contractor with the largest sole source waiver of all, Raytheon, which had a contract in the third year for over \$17 million, offers domestic partner benefits but has not reached full compliance.<sup>50</sup> These examples illustrate some of the nuances behind compliance.

The sole source figures do not include blanket sole source dollars. There are approximately 800 to 900 used each year by well over 20 City departments. The HRC does not track blanket waiver dollar figures, but Goldstein has looked at them and states that most are small, ranging from a few hundred to a few thousand dollars. Since these waivers cannot exceed \$250,000, if 850 is used as an average yearly number of sole source blanket waivers, the maximum amount spent per year could be as high as \$212.5 million. Given Goldstein's estimates, however, the real figure is probably closer to \$4.25 million per year (\$5,000 x 850).<sup>51</sup>

The multiple non-compliant contractor waiver dollars have increased over time, with a slight decrease in the fourth year that may indicate a leveling off in this category. It is logical to expect that, over time, one or two or more companies that manufacture a particular product would seek to garner a larger share of business from the City via compliance with the EBO if the amount of business is worth the cost of compliance. The other companies in that market would follow suit if competition for city dollars were important enough to them. This kind of competitive scenario has occurred, according to Goldstein. Table 3 shows that the number of these waivers increased again in the fifth year, however.

Public entity waivers (e.g., transit agencies, universities, federal agencies) are often for substantial dollar amounts, but they are logical and probably little can be done about them unless public entities begin their own domestic partner policies. The University of California at San Francisco, an example just noted earlier, is often listed as a sole source waived contractor rather than a public entity one. Therefore, some of the dollars for these contracts are going to employers who are closer in line with compliance than waived status indicates. Emergency (e.g., pipeline companies, elevator companies) and bulk purchasing waivers (e.g., data processing suppliers) comprise a small share of the waiver dollars.

Finally, how large are these yearly waiver dollars compared to the San Francisco budget that is subject to the EBO's rules? By fiscal year 2000, the EBO was well in place, so that year will be used as an example. Since waivers were at their highest value that year, 2000 is a worst-case scenario, in

<sup>50</sup> HRC *Five Year Report*, p. 9. Four other of the highest dollar contractors fall into this category: University of California, Electronic Data Systems, Avaya, Inc., and IBM. IBM is shown in the database in 1997 and after. IBM began offering domestic partner benefits in 1997, according to the Human Rights Campaign in Washington, DC. However, their DP benefits policies do not meet San Francisco's requirements, according to the Commission.

<sup>51</sup> Five thousand dollars is a conservatively high estimate.

a sense. The actual city budget for the year was just over \$4.1 billion. Monetary outlays for FY 2000 were a little more than \$3.9 billion. Subtracting the outlays that are not ostensibly subject to the EBO's requirements (budgetary reserves, debt service, salaries and wages, overhead, etc.) leaves a little over \$1.2 billion. Waivers for the year were approximately \$126 million (the highest of any year by approximately 45%, due mostly to some large contracts). Adding in an estimated \$5 million for sole source blanket waivers (956 waivers x \$5,000 is nearly \$5 million, a conservatively high number) comes to about \$131 million, or a little less than one in nine dollars (10.9%).

However, some of the City's *revenues* are also subject to the EBO's rules. For example, companies or organizations that lease City property, such as at the airport, are contractually required to comply with the Ordinance, just as contractors that receive money from the City must comply. Approximately \$239 million appear to fall into this category, which would increase the denominator to \$1.401 billion "EBO dollars" and drop the waivers proportion to just over one in eleven EBO dollars (9.4%).<sup>52</sup> One should keep in mind that in the fiscal year used for this example, waivers dollars were unusually high, so the proportion of EBO dollars that waivers represented in other years would be substantially lower.

Combining the findings from the analysis of waivers suggests that compliance has been high, but there is still room for improvement. Approximately 90% of San Francisco's spending on goods and services goes to compliant contractors, which can also be viewed as 90% effectiveness. This compares favorably to the 94% compliance rate among finalized certification requests. However, the stability of the number of waivers, plus the fact that the yearly waiver dollar amounts vary but remain substantial, both imply the need for continuing compliance and education efforts by the City. Perhaps greater oversight from the Board of Supervisors can encourage stronger efforts by contractors to offer equal benefits to reduce the number and value of waivers.

#### *D. Direct Measures of Employer Response: Newly Equalized Benefits*

The employer response to the EBO was mixed. On one hand, many contractors equalized their benefits. On the other hand, as explained earlier, some employers objected for religious or moral reasons and some because of the law's intrusion on business. Several contractors waged full-scale legal challenges, claiming that ERISA preempted the Ordinance and that it interfered with interstate commerce. A number of employers objected to the costs associated with compliance, while others argued that the tax implications for employees were too high to justify the law. Cynthia Goldstein, who says that the Human Rights Commission has at some point spoken by telephone to half or even more of the compliant contractors, cites their biggest complaint as the extra red tape now involved in obtaining a contract. Dwelling on objections, however, overlooks the fact that many employers supported the law, including some who felt that compliance increased their competitiveness in a tight labor market.<sup>53</sup> Goldstein also noted, for example, that some HR departments were "thrilled" to comply with the law.

Whether they objected, were supportive, or ambivalent, 3,157 contractors had complied by equalizing all provided benefits by June 30, 2001. Some of these employers had already equalized benefits for domestic partners before the EBO, however, and it is important to ask how many in order to assess the impact of the law. One way to assess this is to compare the list of compliant San Francisco contractors to a different list of companies with domestic partner benefits.

Since 1995, the Human Rights Campaign in Washington, DC (HRC-DC) has compiled national domestic partner benefits data from direct reporting via their website, as well as from "news accounts; state and local governments; employee resource groups; individuals; and other gay,

<sup>52</sup> Revenues generally offset expenditures, but in this case, the goal is to examine the total dollar amount (or absolute value) of related transactions, in which case, it is logical to add the expenditures and revenues together into total transaction dollars, or "EBO dollars."

<sup>53</sup> This positive benefit would diminish as more employers comply, of course.

lesbian, bisexual and transgender advocacy organizations.”<sup>54</sup> HRC-DC has also now merged more than 3,000 employers into its data from lists of compliant contractors in San Francisco, Los Angeles, and Seattle, with each city identified separately. HRC-DC states that it verifies its data, but fully admits that it may not include some employers who do have domestic partner policies. HRC-DC allowed IGLSS to use its data to analyze how many of the contractors that are in compliance with San Francisco’s EBO may have had domestic partner benefits in place before the EBO became effective, as their data collection began before the EBO was passed.<sup>55</sup>

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### Box 3: Estimating How Many Contractors Were Compliant Before the EBO

Using data through FY 2001, a comparison of the HRC-DC dataset with the San Francisco Human Rights Commission reports yields some differences that allow us to get a better idea of how many of the 3,157 contractors offered partner benefits before the EBO. First, the HRC-DC dataset explicitly attributes 2,751 employers on its list to the EBO, leaving 406 contractors in question. After examining the names of those 406, it became apparent that at least some of them are attributable to the EBO, but it is difficult to know precisely how many. Only 253 were located in California, and 86 of the California companies had DP benefit dates before 1997 in the HRC-DC database. Therefore, the range of companies implementing DP benefits without regard to the EBO would range from 7.6% (86 plus 153 non-California companies = 239/3157) to 12.9% (406/3157).

It is important to note that San Francisco’s definition of *equal* benefits for domestic partners is more comprehensive than the HRC-DC *domestic partner* benefits definition, which can include just health insurance coverage. From a strict attribution standpoint, then, even if an employer appears in the HRC-DC database before 1997, that employer may have had to come up to San Francisco’s standards.

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Although the comparison of lists of employers suggests that from 8% to 13% of compliant contractors might have already offered domestic partner benefits (see box), the main message should not be lost: the EBO dramatically increased the number of employers providing domestic partner benefits. As the HRC points out, when the EBO was passed in 1996, roughly 500 companies offered DP benefits to their employees. In June 2001, 4,200 nationwide did so, with about 3,000 of them probably due to the EBO.<sup>56</sup> In November 2001, The *San Francisco Chronicle* reported that prior to passage of the EBO, fewer than 100 city contractors provided domestic partner benefits, but by November 1, 2001, 3,289 contractors provided DP benefits.<sup>57</sup> The EBO’s impact on contractors’ benefits packages is undeniably substantial. The actual number of employees affected, however, is somewhat limited by the fact that over ninety percent of the contractors are small companies with fewer than 500 employees.<sup>58</sup>

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<sup>54</sup> The Human Rights Campaign in Washington, D.C., is a national lesbian, gay, bisexual, and transgender advocacy organization. Its WorkNet program contains data on domestic partnership programs in the workplace. The methods are explained in “The State of the Workplace for Lesbian, Gay, Bisexual, and Transgender Americans 2001,” by Daryl Herrschaft, Kim Mills, et al., 2001, p. 4. This report can be found on [www.hrc.org](http://www.hrc.org) in the Worknet section.

<sup>55</sup> In addition, the two data sources were checked to see whether the twenty largest employers listed as compliant in the first three San Francisco reports also appear in the Human Rights Campaign’s database as compliant and whether their domestic partnership benefits policies were listed as being implemented before passage of the EBO or after. This was done for the largest employers because discrepancies for them could have a large impact on overall conclusions and because HRC-DC has been collecting information on Fortune 500 companies for even longer than it has been collecting DP information on all companies. Some Fortune 500s are among San Francisco’s biggest contractors. Only one company showed up on the San Francisco list but did not appear on the HRC-DC list (10,000 employees), but this does not mean it is an error. Finally, there was no indication that attribution for a Fortune 500 DP policy has been made to San Francisco when the policy was in effect before the EBO.

<sup>56</sup> HRC *Fourth Year Report*, p. 1.

<sup>57</sup> *San Francisco Chronicle* “Salvation Army OKs partner benefits.” November 2, 2001, p. A21.

<sup>58</sup> HRC *Five Year Report*, p. 4.

### *E. Outcomes for Individuals: More People Covered by Health Insurance*

Although the main goal of the EBO was to encourage employers to treat employees with domestic partners equally, certainly another goal was to increase the access to health insurance coverage for people in domestic partnerships. Therefore, another important outcome measure is how many employees have signed up a partner for health benefits. Neither the Human Rights Commission, nor any other known entity, collects such data, unfortunately. Employers who were interviewed for this evaluation did not track enrollment data either, due to confidentiality concerns or lack of resources to perform such tracking.

Table 5 shows that in 2002, the Commission estimated that nearly 1.7 million people who work for city contractors had access to equalized domestic partner benefits, up from just over 640,000 in late 1997. The Commission estimates this figure by multiplying employment among contractors (row 1) by their estimate that 3% of employees have a partner and will sign that partner up for benefits (row 2). That enrollment rate probably reflects the highest possible outcome, since a study of different types of employers' experiences suggests that between 1% and 2% of employees will sign up either a same-sex or different-sex partners for health care benefits.<sup>59</sup> Using a more conservative 1.5% to reflect the likely range of outcomes results in an estimate of almost 26,000 partners newly enrolled by the fifth year.

**Table 5. Employees Covered by EBO**

	6/1/97- 11/30/97	Through FY '98-'99	FY 1999-00	FY 2000-01	FY 2001-02
<b>Approximate no. of employees impacted .....</b>	642,750	1,000,000	1,290,000	1,476,000	1,722,000
<b>Estimated DPs enrolling in health coverage, at 3%* .....</b>	19,300	30,000	38,700	44,280	51,660
<b>Estimate at 1.5% .....</b>	9,640	15,000	19,350	22,140	25,830

\* The HRC uses a 3% enrollment estimate; several sources indicate that 1% to 2% is more realistic.

NOTE: All data derive from the SF HRC *6-Month, 2-Year, 3-Year, 4-Year, and 5-Year* reports. Numbers are rounded.

One potential countervailing factor that would decrease coverage might occur if contractors eliminate or reduce the quality or scope of certain benefits in order to equalize them. In other words, how many, if any, of the contractors who are compliant because they do not now offer spousal benefits used to offer benefits? The HRC notes that the majority of these entities are small employers with 20 or fewer employees. Such smaller employers are not as likely to pay for spousal benefits to begin with. However, might it be the case that the demands of the EBO pushed some contractors just a little too far in terms of cost, and they complied by reducing their offerings?

Cynthia Goldstein reports that the HRC would only know instances in which this occurred by catching it during the certification process. Initially, employers are asked to check off on their certification form the benefits they offer. Contractors sometimes checked off more benefits than they actually offered because they thought the City would respond favorably. Later, during the certification process, it appeared as though the prospective contractor had decreased benefits, in which case the HRC required documentation. The documentation showed that benefits had not been dropped. There was only one known instance in which spousal benefits were dropped, according to Goldstein, and it was at a financially troubled AIDS service organization that had no married employees. No evidence suggests that the EBO's requirements caused employers to drop spousal benefits or to reduce the quality of benefits offered, according to the HRC.

<sup>59</sup> M.V. Lee Badgett. 2000. "Calculating Costs with Credibility: Health Care Benefits for Domestic Partners." *Angles, The Policy Journal of the Institute for Gay and Lesbian Strategic Studies* 5(1), p. 2.

### *F. Positive Outcomes for the City: Incidental Financial Benefit of Insured Partners*

Increasing the number of insured people by 26,000 through the EBO is a big change that could have other positive impacts for the City. Without domestic partner coverage, some of these partners might have bought their own policies. Others, unable to afford private insurance, might have been eligible for Medicaid, while still others may have ended up uninsured. If those who were unable to afford insurance went uninsured, then the City's health system would likely have had to pick up some costs in emergent or other care.

To illustrate the magnitude of a City's spending on health care, consider that 1996 U.S. Census Bureau data—the most recent year available for these figures—show that San Francisco's yearly public health and hospitals expenditures were \$685 million, or \$926 per capita,<sup>60</sup> which is the second highest of the nation's largest cities, behind only New York City. If the 26,000 new enrollees as a group were typical of the San Francisco population in terms of usage of the public health system and the likelihood of being uninsured, then on average the group would have had public health expenditures of \$926 per person, as well. Overall, that group would have cost the City about \$24.1 million, or 26,000 times \$926.<sup>61</sup> However, since 41.5% of contractors are in the City,<sup>62</sup> a best estimate is that close to 41.5% of employees live in the City, which would yield approximately \$10 million in savings. These savings do not include possible Medicaid savings to the state (87% of contractors are in California<sup>63</sup>) or federal government, nor does it include savings due to newly covered partners' children. While this is a simplified exercise, it demonstrates that the City can save considerable money when its residents gain health insurance. These savings may have offset some of the City's legal or implementation costs, especially when one considers that such savings would accrue yearly.<sup>64</sup>

### *G. More Underwriters of Domestic Partner Coverage*

The Human Rights Commission reports that at the inception of the EBO, only fourteen insurance companies offered domestic partner coverage for health, dental, and vision care; by their August 2000 report, the figure had increased to almost 150. The Commission also states that insurers write such policies in an increasing number of states and are more responsive now than previously to writing partner policies for smaller employers. The State of California and the City of Portland, Maine, have even passed legislation to require insurers that write spousal policies to write domestic partner policies.<sup>65</sup> However, DP insurance coverage remains a barrier in some parts of the country, especially for smaller employers.<sup>66</sup>

<sup>60</sup> Based on a population of 740,000. U.S. Bureau of the Census. 2000. *Statistical Abstract of the United States: 2000*. Washington, DC. (Data obtained from Census Bureau website.)

<sup>61</sup> The per capita dollar figure for San Francisco health expenditures is many years old and likely substantially higher today, which would increase savings.

<sup>62</sup> HRC *Five Year Report*, p. 5.

<sup>63</sup> *Ibid.*

<sup>64</sup> Based upon the assumption that more City residents were covered by health insurance due to the EBO, the Department of Public Health was contacted in order to determine whether any effects were detected. The department's public relations representative, after consulting with the director, responded that there were no quantitative data, but that it was definitely the department's belief that the EBO had a beneficial impact. Interviews with several other public health officials in different San Francisco agencies in late 1999 did not reveal any ability among administrators to track the EBO's effects.

<sup>65</sup> HRC *Five Year Report*, p. 10.

<sup>66</sup> HRC *Three Year Report*, p. 7.

## 6. CONCLUSIONS AND LESSONS LEARNED

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### *A. Conclusions*

The San Francisco Equal Benefits Ordinance, an activist-inspired initiative to obtain equality of benefits for employees of city contractors with domestic partners, has now effectively delivered the option to choose partner benefits to more than 1.7 million employees working at over 3,500 companies or organizations around the country. An estimated 26,000 individuals are now enjoying health insurance coverage and other benefits that they may have previously been unable to obtain. The City worked hard to gain high levels of corporate and contractor cooperation. This effort contributed to the effectiveness of the Ordinance: 94% of all finalized contractor applications result in compliance. No evidence exists to suggest that employers have diminished their benefits in order to comply with the EBO. In addition, health insurers have risen to the challenge, with the number offering DP benefits increasing to approximately 150 nationwide in 2001 from about 14 when the EBO was passed in 1996.

Several conclusions can be drawn regarding the efficiency and cost of the EBO and its implementation. By the end of the fifth month after passage, the City had successfully formulated rules and procedures and notified the public. An initial flood of compliance certification requests never resulted in a large backlog. The new contracting requirements did, however, slow down and add steps to the City's purchasing process for all City departments, as well as require that five full-time equivalent staff be added to the HRC.

The City was also forced to wage a formidable legal defense of the EBO, but one must weigh the legal costs and the other added costs of the Ordinance against the successful fulfillment of a philosophical commitment to equalizing the employer benefits of many of the City's residents, thus enhancing their quality of life. It is also entirely possible that the costs of the legal defense will ultimately benefit other cities adopting similar legislation, at least those within the jurisdiction of the U.S. Ninth Circuit Court. In addition, if one takes into account the City's possible public health spending reductions associated with the many newly insured residents, the net cost effect of the EBO may be a "profit" for the City, with the related public health savings accumulating over time in relation to the initial fixed costs of implementation.

The City's accommodating approach toward compliance was instrumental in gaining cooperation among contractors. From the beginning, City officials sent the message to contractors and the public that they wanted the legislation to achieve its goal of equalizing benefits and that, for this to happen, they understood that accommodation was necessary for all parties involved. The San Francisco Human Rights Commission formulated rules and administered the ordinance with this in mind. Key members of the Board of Supervisors and the Mayor worked closely with the Chamber of Commerce, industry associations, and employers to overcome problems in order to make the ordinance work. The City also created a waiver process for departments that found it necessary to transact business with non-compliant entities. Considerable contract dollars still flow to non-compliant contractors, especially to sole source suppliers. Any effort to reduce the use of waivers would be most effective in this category. The sum of EBO waivers, however, represents less than 10% of City contracts.

The EBO has not been without its problems. Some contractors opposed the EBO for religious or moral reasons and some because they objected to government intrusion on their operations. Though the extra red tape newly added to the contracting process by the Ordinance disturbed some employers, others agreed philosophically and were very happy to offer their employees the new partner benefit options. A couple of employers who were interviewed were nearly as enthusiastic about the Ordinance as were City officials and activists. Importantly, contractors also now have greater certainty that the costs to them of providing domestic partner benefits are quite low. There are no data, however, to determine how well employees have reacted to the new benefits.



Finally, one of three legal challenges led to changes in the law. First, the EBO cannot require equalization of health and pension benefits (ERISA-based) for contractors under City agencies that act as regulators in a monopoly situation, such as at the San Francisco International Airport. Of course, companies in this situation can voluntarily equalize health and pension benefits, and many have. As of June 30, 2002, only 95 companies had chosen the partial compliance made possible under the ruling. Second, the Court limited the geographic reach of the EBO to include only San Francisco, property owned or legally occupied by the City outside San Francisco, and places outside the City where a contractor performs work related to a city contract.

The available evidence indicates that San Francisco's Equal Benefits Ordinance has effectively equalized domestic partner benefits for tens of thousands of employees of the City's contractors, many of whom live in different locations across the country. Because the equal benefits idea has also spread to other cities, the effect has been even larger, and a growing number of locales are considering similar laws. The cost of the legislation to the City and its contractors has been manageable, and must be weighed against the many positive outcomes discussed in this evaluation.

## ***B. Lessons Learned***

Some of the findings and observations in this report may be helpful to San Francisco's Board of Supervisors and city officials, as well as to others interested in the outcomes of the Equal Benefits Ordinance. Furthermore, other jurisdictions can learn many important lessons from San Francisco's groundbreaking equal benefits efforts. Some of the major lessons are presented below.

*Implementation Flexibility.* Employee benefits comprise a substantial portion of the cost of doing business. Health benefits costs, which account for the largest portion of the benefits mix, are forever increasing and are a very difficult expense for many employers to cover. Therefore, San Francisco's accommodating and cooperative approach conveyed the message that the City was aware of the comprehensiveness of the demand it was making and was willing to do all it could to make the program work for all parties involved.

Accommodations that other jurisdictions might consider emulating are:

- Encouraging city officials and politicians to work closely with the local Chamber of Commerce and other business associations to work out problems in advance.
- *Provisional compliance status* for contractors that face valid time limitations in attaining compliance.
- *"Reasonable measures" compliance* for contractors that demonstrate that a best effort was made, but completely equal benefits are not possible for reasons beyond the contractor's control, such as the inability to find a domestic partner health insurance underwriter in a particular location. In such cases, as long as a cash equivalent payment is offered employees seeking an unavailable partner benefit, the contractor can be considered to have taken all possible steps to end the discrimination in question.

*Collecting Data for Monitoring and Evaluation.* Because it is incumbent upon government to formulate responsible policies that benefit its citizens, politicians must be prepared to justify their actions. A law or program can be justified, regardless of cost, if it benefits the public or corrects an inequality or injustice, or is desired by a majority (or an assumed majority in a representative government), but does not have an unduly adverse impact on any particular class of people. But politicians must also take the efficiency of such a program into account. If the cost is too high, new inequalities and problems can result that outweigh the good derived by the law or program. For these reasons, any jurisdiction implementing a law similar to the EBO should consider incorporating a system to account for costs, savings, and other issues associated with the new program to the extent feasible. Examples include:

- Tracking the subsequent competitiveness of the contracting process;

- Tracking savings that accrue due to the law, such as within the public health system for newly insured partners;
- Devising a confidential feedback mechanism from contractors to government officials designed to track how many employees avail themselves of the benefits (which would be crucial to estimating employer costs, public health savings to some extent, and public benefit, and could be accomplished in cooperation with health insurers);
- Incorporating systematic legislative oversight of the numbers of different types of waivers and associated contractor dollars in order to safeguard against abuse of waivers.

*Facilitating the Waiver Process.* The San Francisco Human Rights Commission and some department heads (who initiate contracts) realized early on that some of the most common waivers—for sole source non-compliant contractors—were being repeatedly submitted and were very time consuming. The Commission decided to relieve itself and the City departments of this burden by establishing a department-executed blanket sole source waiver for contracts that readily fit one of a pre-coded list of exceptions. Paperwork must only be filed by a department, with no approval process required. Such a shortcut is likely to benefit other locations. The large number of them granted by San Francisco testifies to the need for such a mechanism, but also indicates the importance of monitoring them systematically for potential abuse.

*Coordinating Legislation at the State Level.* Local legislators working on EBO-type legislation should consider enlisting their state legislators' help to require health insurers to offer domestic partner coverage among their products. This step is especially important in less populated areas with a less competitive health insurance market. The State of California has addressed this issue even though the City saw no need.<sup>67</sup> Second, legislators should consider incorporating the important legal issues regarding ERISA carve-outs and the geographic reach of the legislation—discussed at length in this report—into their laws. The San Francisco City Attorney's office has suggested that any legislators who want advice in crafting these portions of their legislation should contact the City Attorney's office.

*Plan for Staffing Needs.* For an undertaking like the EBO in a city the size of San Francisco, the implementing agency should plan for at least five full-time equivalent staff on the project (depending upon the scope of the law). The rulemaking and implementation period and the beginnings and ends of fiscal years are the most labor-intensive periods for this kind of program. Therefore, cities may be able to shift additional needed staff onto and off the project, depending upon such workflow patterns.

*Address Tax Inequalities in Partner Benefits.* The EBO concept has the potential to measurably reduce the number of people in the country without health insurance, thereby decreasing federal and state outlays for Medicaid and other health programs that benefit those without private insurance. However, the fact that employees will be taxed on the value of partner benefits creates a disincentive to take advantage of employers' new offers. Eliminating this tax inequity requires action at the federal and state levels. At the federal level, state Congressional delegations and governors could attempt to gain support for a federal income tax exemption for the portion of domestic partner benefits paid by employers, just as exists for spousal and family benefits. Employers should, likewise, be given the ability to treat partner benefits exactly as they do spousal benefits. Similar measures can be proposed at the state level. California, often at the forefront of policy innovation, has recently dropped its income tax on domestic partner benefits.

*Reduce City Administrative Costs.* San Francisco's City Controller, Edward Harrington, suggested that administrative compliance costs for other cities could be reduced if they accepted San Francisco's compliance determination. When asked, Cynthia Goldstein of the HRC stated that she would be more than happy to provide certification data to other cities.

<sup>67</sup> Interviewed officials all favored allowing the market to respond, rather than a legislative solution.

An important point for local politicians to remember is that administrative costs may be offset by potentially significant savings to local public health systems due to increased private insurance. Activists should not overlook the strategic value of this argument.

*Include Subcontractors.* Subcontractors are not covered by the EBO, but they are covered by the law's nondiscrimination requirements. Other jurisdictions might consider extending coverage to subcontractors, as Los Angeles has, in order to increase the reach of the law.

## PART TWO

# DID THE EBO INCREASE SAN FRANCISCO'S CONTRACT EXPENDITURES?

One concern raised in the debate over the Equal Benefits Ordinance is that the city's cost of doing business would increase substantially. This section discusses three reasons why prices might rise after implementation of an equal benefits ordinance.

- First, companies may have higher labor costs that they will pass along in the form of higher prices.
- Second, some contractors will drop out of the contracting pool, so competition for city contracts will fall and remaining bidders may have more market power to increase prices.
- Third, new compliant businesses might arise to sell goods and services on behalf of the companies that refuse to comply with the law, but at higher prices.

The first part of this report explains the theory behind each of these three potential sources of increased costs, analyzes the evidence that each of these phenomena actually occurred, and describes steps municipalities can take to avoid or mitigate such increased costs.

The second part of this section of the report assesses the total impact of the EBO on city expenditures by analyzing cost data from the San Francisco International Airport (SFO) and the San Francisco Purchaser's Office in an effort to determine how great a fiscal impact, if any, the Equal Benefits Ordinance had on San Francisco. Overall, that section finds little evidence to support a conclusion that there were substantial cost increases.

The final part draws conclusions about the San Francisco experience and considers the implications for other cities that are contemplating an EBO. Despite the lack of information on the fiscal impact of the San Francisco ordinance, other cities around the country have taken steps to implement ordinances on their own (see appendix). The final part also suggests ways to dampen any pressure on prices that might result from the passage of an equal benefits ordinance in those cities.

## 1. WHY WOULD CITY CONTRACTORS INCREASE THEIR PRICES, AND BY HOW MUCH?

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### *A. Companies May Pass Higher Labor Costs Along in Higher Prices Charged to the City*

Some San Francisco businesses argued that the cost of implementing domestic partner benefits would be so high that they would be forced to raise the price of their products. In general economic terms, those companies were arguing that the cost of their labor would increase significantly as a result of the EBO and that they would be forced to cover those increased production costs with higher prices.

The business cost impact depends on how many employees sign their domestic partners up for benefits and on how expensive benefits for those partners are. This study only considers cost increases related to the provision of additional health care benefits for two reasons. First, when most companies decide to confer benefits to domestic partners, the costly benefits consist primarily of the provision of health care. Second, companies that provide additional benefits to domestic partners tend to provide benefits that have value to employees but cost the companies very little. For example, the airlines allow spouses to fly "stand-by" for free. When some airlines extended this benefit to

domestic partners, it was at virtually no additional cost to the airlines, because stand-by passengers only fly when there is excess capacity (i.e. the stand-by passenger would not be displacing a paying customer). The driving fact in cost increases is the increased enrollment in health care plans.<sup>1</sup>

The experience of many large employers suggests that adding provisions for both same-sex and opposite-sex domestic partners results in a 0.5% to 3% increase in health care plan enrollment. Second, according to the U.S. Bureau of Labor Statistics,<sup>2</sup> the average employer spends roughly 6% of labor costs on health care benefits for employees and family members. So, if health care coverage constitutes only 6% of a typical employers production costs, and those costs increase by 0.5% to 2.5%, the resulting change in labor cost should range between 0.03% and 0.18%. Further, if labor costs constitute half of the total cost of providing a product or service, for instance, then the company's total cost of production would only rise 0.015% to 0.09%. However, this report maintains a more conservative estimate of a range of 0.03% to 0.18% in increased costs as the likely result of an equal benefits ordinance.

Therefore, using the experience of other employers suggests that firms would experience increased labor costs of 0.03% to 0.18%, and other studies suggest that approximately two-thirds, or 0.02% to 0.12% of those costs, would actually be passed through to the City in the form of higher prices.<sup>3</sup> To put this in perspective, a company with a \$10,000 contract with the City might charge \$10,002 to \$10,012 for the same contract after offering domestic partner benefits to its City-contract employees as a way of becoming compliant with the Equal Benefits Ordinance.<sup>4</sup>

*Lessons for Implementation:* This potential source of higher prices for cities should only result in extremely small increases. This analysis suggests that a range of 0.02% to 0.12% is reasonable to expect. Of course, companies might use a new law as an opportunity to increase prices much more than that. Such behavior, if not justified by company-specific employment and cost data, would suggest unwarranted price inflation. Cities can protect against dishonest pricing of goods (i.e. excessive price increases represented as being related to the provision of domestic partner benefits) by educating those city employees who contract on behalf of the city. If those employees

<sup>1</sup> Reports from various employers suggest that health care costs for domestic partners are comparable to those of all other types of people covered by health care plans. See M. V. Lee Badgett, "Calculating Costs with Credibility: Health Care Benefits for Domestic Partners," *Angles*, Vol. 5, Issue 1, 2000.

<sup>2</sup> U.S. Department of Labor, Bureau of Labor Statistics, "Employer Costs for Employee Compensation Summary – March 1999."

<sup>3</sup> An issue for this analysis is this figuring out how much of this cost increase companies will try to pass along to the city and to other customers. Companies might simply absorb increased labor costs in order to remain competitive. For example, when government agencies require firms to raise wages for their employees, each firm decides how much of the new labor costs it will absorb in lower profits and how much it will pass along in the form of higher prices. The percentage of the cost that is passed along in the form of higher prices is known in social science as the "pass-through." In the winter of 1999, California State University, San Francisco, and the University of California, Berkeley both released studies on a proposed minimum wage ordinance for companies that contract with the City of San Francisco. Those studies assumed pass-through rates ranging from 33% to 100%. The average of these pass-through rates is 67%. Given these considerations, if the likely increased cost to employers of 0.03% to 0.18% is "passed through" to prices at the rate of 67%, the likely increase in prices resulting from a domestic partners ordinance would range from 0.02% to 0.12%.

<sup>4</sup> This calculation also assumes (1) that employers will pass along the .03% to 0.18% increases in cost they may experience (at 67%) to all clients uniformly in order to minimize the risk of losing any one particular contract due to price increases, and/or (2) that employers that only conduct a very small fraction of their business with the city are located outside the limits of that city, and are not on city-owned property. If neither of the assumptions above applies to a company that conducts a small portion of its business with an equal benefits city, that company might want to pass along higher prices to that city. For example, a company that plans to conduct only 1% of its business with a given city would experience cost increases of 3% to 18%, relative to the size of its city contract (0.03%/1%, 0.18%/1%). A company that was determined to recover all of its potential increased costs from its city contracts might charge \$10,300 to \$11,800 on a \$10,000 contract. But if other bidders are not trying to pass along the full cost increase to the city, then companies will face competitive pressure to keep bids low. Thus potential bidders are more likely to either absorb whatever their profit margins would bear, or simply not bid.

understand what kind of price increases they should expect from honest companies, and are empowered to require contractors to justify excessive higher prices with specific cost information, disproportionate pricing can be avoided.

### *B. Price-Reducing Competition Among Bidders Might Fall*

When the equal benefits law went into effect in San Francisco, contractors who had previously bid on City contracts became ineligible if they chose not to comply. As such, some of the bidders who previously held the status as “lowest bidder” were no longer part of the competitive process. City purchasers were forced to go with the lowest eligible bidder (e.g., vendors that were previously the *second* lowest bidder), and because of reduced competition, might have paid more for some goods and services. Put another way, the equal benefits law could raise prices because some of the most efficient companies that deliver their products at the lowest price will become ineligible, allowing remaining bidders to pass along their higher prices.

A second concern arises because the city seeks many highly specialized goods and services. For those specialized items, relatively few companies exist that are capable of meeting some specific demands. Under these circumstances, the reduction in number of competitors resulting from the new equal benefits ordinance has the effect of giving market power to the remaining bidders. In this case, some companies should be expected to raise their prices because they know that some of their former competitors will not be eligible to bid.

*The San Francisco Experience:* A good indicator of how competitiveness was affected by the equal benefits ordinance is the change in bidding behavior. For this analysis, this study gathered data from the San Francisco City Purchasers’ office on the number of bids received for a random sample of over 1500 purchases conducted by that office.<sup>5</sup>

The data show that the number of bids invited by San Francisco did not change much after the implementation of the equal benefits ordinance. As illustrated in Figure 1, for Fiscal Years 1996, 1997, 1998, and 1999, the average number of invited bids remained statistically equal.<sup>6</sup> However, the number of bids *received* by San Francisco dropped significantly after the implementation of the new policy: during the combined FY’s 1996 and 1997, the number of bids received averaged 3.2; during the combined FY’s 1998 and 1999, the number of bids received averaged 2.8. This decrease in the number of bids received by San Francisco after the passage of its domestic partner ordinance is important, because it was large enough to be clearly statistically significant.<sup>7</sup> With the absence of other events likely to have affected bidding behavior, this report concludes that the passage of the EBO in San Francisco caused a statistically noticeable reduction in the number of bids submitted for San Francisco contracts.

<sup>5</sup> The data consisted of recorded information regarding the bidding process for each purchase made by the San Francisco Purchasing Department. When purchasing goods or services for the City, purchasers in San Francisco are required to complete a form called the “Bid Check List” or the “P-101” form. For each contract, the P-101 form requires that purchasers record (1) the number of bidders invited, (2) the number of bidders who responded, and (3) what kind of bidders responded (i.e., whether the bids were from companies where a majority of ownership is by women, where a majority of ownership is by ethnic minorities, or whether the business is located in the city of San Francisco). For this report, 32 P-101 forms were randomly selected from each month of operation of the San Francisco Purchasers’ Office, for Fiscal Years 1996 through 1999. Final analysis of bidding behavior included information from over 1500 forms.

<sup>6</sup> The largest year-to-year change observed in the number of bids invited (the change from FY 1998 to FY 1999) was analyzed using a comparison of means independent-samples t-test. The analysis yielded a P value of .087, which does not meet the standard statistical significance threshold of < .05.

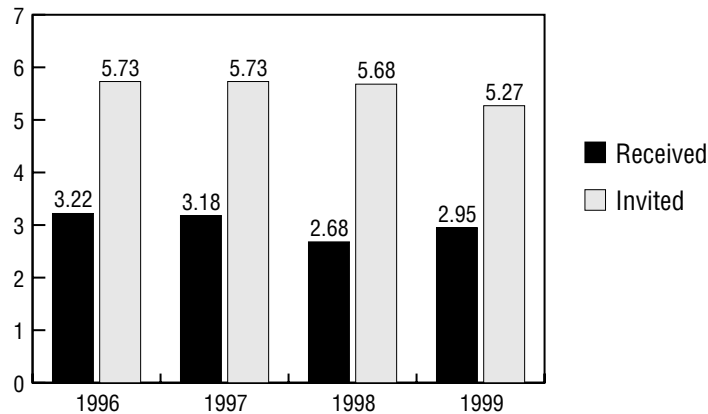
<sup>7</sup> Analysis consisted of a comparison of means using an independent-samples t-test. The analysis yielded a P value of .000, which meets the standard statistical significance threshold of < .05. In other words, the difference observed (in this case, 0.4 bids) would only occur due to random data fluctuation less than one time in a thousand.

As illustrated in Figure 1, the average number of bids dropped sharply after passage of the equal benefits ordinance, from 3.2 in FY 1997 to 2.7 in the following year. While 0.5 of a bid may not seem large, in economic terms the difference between three companies bidding on a contract and two companies bidding on a contract is potentially meaningful in terms of market power. A company that wishes to raise prices more than costs only has one instead of two competitors to contend with.

San Francisco did begin to recover competitiveness after the first year of the equal benefits ordinance, however. The average number of bids received rose from 2.7 in FY 1998 to 2.9 in FY 1999. This increase was also statistically significant.<sup>8</sup>

Thus, while the number of bids that contractors submitted to San Francisco did drop noticeably as a result of the equal benefits ordinance, within one year the level of competition to begin to show signs of recovery.

**Figure 1. Average Bids Per San Francisco Contract**



*Lessons for Implementation:* San Francisco did not appear to make any attempt to compensate for potential reduction in competition among contractors. The result was less competition in the contracting process and a possible granting of market power to raise prices to remaining vendors. One straightforward solution that can be undertaken by any municipality implementing an EBO is to increase the number of bids required for every contract after implementation of the new ordinance. A larger number of invitations would compensate for the decreased ratio of responses to invitations resulting from the new ordinance.

The process of finding additional vendors may increase the length of time it takes to complete any given purchase, so city purchasers should be prepared to begin the bidding processes earlier than they did prior to their new equal benefits ordinance. If the vendor pool for a particular good or service is very limited, then more expansive efforts to locate viable vendors will be necessary in order to keep bidding numbers at healthy levels.

### C. Appearance of Intermediaries

While resellers or brokers are present in any normal, healthy business environment, the passage of this law created a new market for the sale of “compliant” goods. Any given company that sells a good at a low price directly to the city might opt not to comply with the EBO. Instead, that company could simply license an already compliant broker to sell their goods. Where the city

<sup>8</sup> Analysis consisted of a comparison of means using an independent-samples t-test. The analyze yielded a P value of .033, which meets the standard statistical significance threshold of < .05.

bought a particular good directly from the manufacturer before, the city is now forced to buy that same good through an intermediary or “middle-man.” In order to make a profit, that intermediary would exact a premium for the resale. That premium would be passed along in the form of higher prices to San Francisco.

Over time, however, such premiums would diminish greatly, if not disappear altogether. First, the original manufacturer risks losing business if the intermediary’s mark-up is too high. Second, in any market where there are profits to be made, new intermediaries will enter that market, pushing prices down. As competition increases, prices fall. These forces, coupled with the fact that more and more companies will opt to comply with the Equal Benefits Ordinance over time, would suggest that any increased costs resulting from intermediaries would not persist in the long run.

*The San Francisco Experience:* To assess the initial prevalence of intermediaries, this report uses data gathered through personal interviews with selected members of the San Francisco Purchasers Office. During interviews conducted in March of 1999, members of the Purchasers Office reported a moderate-to-high prevalence of intermediaries, suggesting that the city might be paying more for goods and services as a result of the equal benefits ordinance.

The comments below are by four experienced city purchasers that various persons throughout that office described as “knowledgeable.” Their comments are roughly representative of the general view of those interviewed in the San Francisco Purchasers Office who were responsive to my question regarding the changes that have occurred in their work experience since the implementation of the equal benefits ordinance. Most agreed that they had observed some changes. Personnel in the City Purchasers’ Office used the terms “broker” and “gap-filler” interchangeably to indicate intermediaries.

- “I call them ‘gap fillers’... and they are very prevalent. I would say, as a very conservative estimate, that 75% of public bids have a ‘gap-filler’ participating. They win the contract more often than people would like to admit.”
- “I had two [intermediaries] within the last couple of weeks that we paid a lot for. In one example, we paid 6K on a 30K contract. That cost us an extra 20%.”
- “...how we are getting pipe to the water department is a good example of this. We’re getting the exact same brand pipe we got before, but now we’re paying 25% more for it.”
- “I get at least two to three brokers the majority of the time. Fifty percent of the time, the broker gets the job.”

The unanimity of sentiment by those interviewed and their specific accounts of particular incidents suggest that intermediaries appeared with greater frequency following the passage of the San Francisco EBO. However, qualitative data cannot tell us how common these experiences were, nor the precise impact on the city’s purchasing costs.<sup>9</sup>

*Lessons for Implementation:* One tactic for avoiding the impact of intermediaries is to make compliance easier. A firm that is unable or unwilling to comply with a cumbersome new regulation has an incentive to find a distributor for its products. The San Francisco ordinance, because it was the first of its kind, presented significant barriers to many companies. At the time the ordinance passed, only a handful of insurance companies provided domestic partner coverage to employers. For some small companies, no insurance companies capable of handling such coverage existed at all. The barriers to compliance were substantial. However, within a year of passage of the new law, the insurance industry underwent a remarkable change and adapted to its new market. Today, insurance carriers that offer domestic partner coverage to even small businesses are plentiful.

<sup>9</sup> In August of 2002, personal interviews were sought from personnel with the same responsibilities as those interviewed in 1999, however, the San Francisco Purchasers Office was not amenable to this request. Consequently, this study was not able to collect any data regarding the theory that premiums would have abated during the period of 1999 – 2002.



Unfortunately, the misconception that domestic partner coverage is either not accessible or not affordable persists in many businesses today. Many small businesses do not understand exactly how small the costs are that other employers have experienced. Additionally, small businesses may balk at providing coverage simply because it might involve registering with an enforcement agency or some other bureaucratic process that they find overly burdensome.

Cities that would implement an EBO can lower the number of intermediaries by making compliance as simple as possible. Pro-active dissemination of information regarding available insurers and the low costs of compliance experienced by other employers should facilitate compliance. Creating a streamlined and burden-free verification process will also keep costs to the city down by reducing the number of companies that opt to use intermediaries rather than deal with the bureaucratic difficulties associated with complying with the new law.

Additionally, the City of San Francisco allowed seven months to pass after adopting its equal benefits ordinance before it became law. This delay allowed many firms the flexibility to adapt and become compliant on their own terms. Other cities that consider implementing an equal benefits law should consider a delay of several months in order to allow potential contractors to prepare.

## 2. ASSESSING THE OVERALL IMPACT ON SAN FRANCISCO'S ACTUAL EXPENDITURES

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Any one of the three potential sources of higher prices described above are unlikely to have had a large effect on prices in San Francisco. When taken together, however, the combined effect could have created a noticeable increase in expenditures. For that reason, this analysis tests for increased costs to San Francisco in the most direct way possible.

As a model for San Francisco, the San Francisco International Airport (SFO) was selected both because of the accessibility of data and because the scale and diversity of activity conducted at SFO made it a good model from which results could be extrapolated to the entire city.<sup>10</sup> The original, intuitive notion for investigating a potential program effect was to find a number of items consumed by the City of San Francisco, specifically by SFO, for which the city had constant demand over time. Because demand would not change, the costs associated with consumption of the same quantity of good could be examined over time. It should be noted, however, that the restrictions imposed by the type and amount of data available for this study were considerable.<sup>11</sup>

The most critical problem facing this study was that the only data available revealed nothing about the quantity of good or service consumed, but only the amount spent on these items each year. In order to appropriately account for this limitation, this study measured consistency of demand indirectly. This report observed the spending habits of San Francisco International

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<sup>10</sup> To place things in perspective, SFO's 2001-2002 annual budget was \$629 million. During that same year, SFO directly funded 1,578 full-time employees, and through its activities supported approximately 33,900 employees. In practical terms, this means that this study is based on a City Department that is larger than the entire municipal governments of many small cities that will be considering passage of an equal benefits law.

<sup>11</sup> Two recent studies on the City of San Francisco, one conducted by California State University, San Francisco and the other by The University of California, Berkeley both encountered similar difficulties in obtaining useable data from the City of San Francisco. Those studies both were ultimately forced to conduct their analyses using creative, indirect methods of analysis. The University of California, Berkeley conducted a survey of businesses throughout San Francisco, and while the information returned from the survey represented only a small fraction of the San Francisco business community, it was, out of necessity, the information upon which their minimum wage study was based. San Francisco State University used cumbersome accounting data obtained from the City of San Francisco, but the best information of that type was only tangentially relevant to their study; as with this study, San Francisco State extrapolated upon the information they received in order to produce meaningful data.

Airport for each of approximately 18 spending categories for fiscal years 1994 through 1999, and compared them with similar spending data from airports in the Los Angeles area, including Los Angeles International Airport (LAX) as described below (see Box 4). The analysis focused on the time surrounding the implementation of the equal benefits law, which first went into effect at the beginning of FY 1998.<sup>12</sup> Since Los Angeles did not have an equal benefits requirement at that time, LAX expenditures act as a control group to see what would have happened without the EBO in San Francisco. If the EBO had caused a large increase in prices, then we would expect spending by SFO to have increased compared with LAX after FY 1997 (see Box 5).

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#### **Box 4: Methods for Analyzing Changes in Expenditures**

This report estimates EBO-related increases in city expenditures by comparing two roughly parallel pools of data over time in order to establish a pattern. (In statistical terms, this is a quasi-experimental interrupted time-series with non-equivalent control group research design.) These two pools of data—expenditures at SFO (the “experiment” data) and LAX (the “control” data)—were observed before and after the EBO was implemented in San Francisco.

The analysis looks for an EBO effect on SFO in two ways. First, did spending at SFO increase after the implementation of the EBO? The upward pressure on spending predicted by the first half of this section implies that spending would have increased. Second, did spending at SFO show a different pattern than spending at LAX after the passage of the EBO? The second measure assumes that the expenditure patterns over time at SFO and LAX would have been similar if the EBO had not been passed, making LAX an appropriate control group. The pricing pressure argument implies that spending at SFO would increase more than spending at LAX over the same time period.

As noted in the text, certain budgetary items for both airports were selected based on their consistent level of expenditure over time. More specifically, budgetary items were chosen for which the change in annual expenditure from 1994 to 1997 (before passage of the equal benefits law) did not vary by more than 25%, plus or minus. From an original 80, this singled out 18 of the most stable categories of expenditure for analysis. In keeping with the original notion for investigating a potential program effect, “stability of expenditures over time” was then thought of as the best available proxy for stability of demand over time. Consistency of demand was very important for this analysis, because looking solely at expenditure data makes it difficult to distinguish the impact of rising prices for goods and services—our concern—from buying larger quantities of those goods and services.

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#### **Box 5: Airport Expenditure Data**

Data used for San Francisco International Airport analysis was obtained from the San Francisco Controller’s Office and consists of yearly expenditures on goods and services, by category, funded from the airport operations budget. Operations expenditure data were used for this analysis so that expenditures related to large-scale construction associated with the Master Plan renovations at SFO would not be a confounding factor. Certain line items, e.g. employee pension contributions, were omitted from analysis, because they were not obviously classifiable as a good or service. This analysis is limited to goods and services because they are the most likely to be affected by the EBO. If any EBO effect does exist, it would be more readily discernible by an analysis that is limited in scope, as this analysis has attempted to be.

Data used for Los Angeles International Airport (LAX) was similar to that used for San Francisco, but is actually an aggregation of information from four airports in southern California. This data is referred to in this analysis as “LAX data” only because Los Angeles is the largest of the airports in the data. This data was aggregated because each of the four airports is funded from a single source, the City of Los Angeles Department of Airports, and regional effects would be likely to affect each of the related airports in a similar manner.

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<sup>12</sup> Actually, the ordinance took effect on June 1, 1997, one month before the beginning of the 1998 fiscal year. While this is inconvenient, there is no way to account for this with the data available. The analysis in this study assumes out of necessity that the impact is not significant. Because any change in spending habits would occur one month before the actual event observed, the effects of this discrepancy would be to cause the observed effect to be understated, and thus the conclusions drawn this analysis are made more conservative.

Table 6 below depicts the average and median percentage changes, from year-to-year, of 18 categories of expenditures of goods and services. Put another way, each of the expenditure categories examined for this analysis changed each year, and the table below shows, for each year, how the average change within the 18 expenditure categories and the median change of the 18 categories. Those 18 categories included such goods and services as janitorial services, vehicle maintenance, lumber, and uniforms.<sup>13</sup> The table, for example, indicates that spending in the 18 categories increased an average of 5.4% at SFO 1994 to 1995.

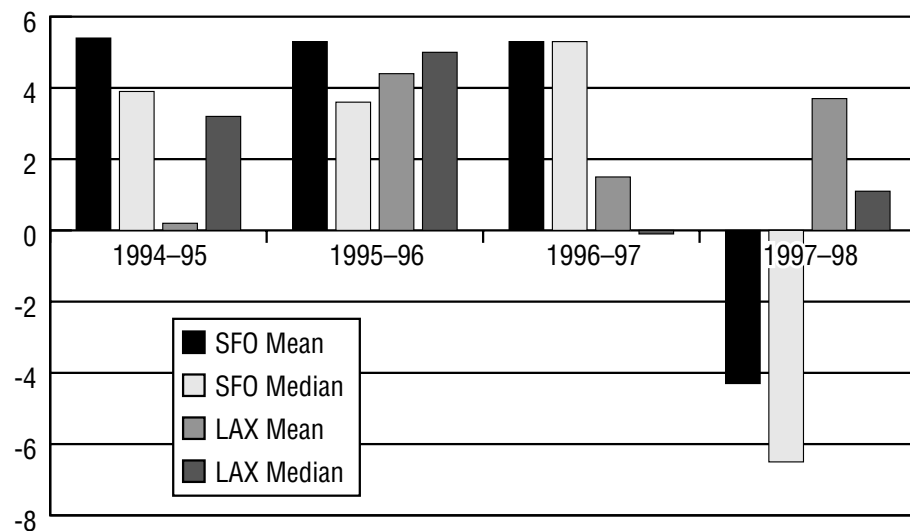
**Table 6. Mean and Median Expenditure Categories for SFO and LAX**

	SFO		LAX	
	Mean	Median	Mean	Median
<b>1994-95</b>	5.4%	3.9%	0.2%	3.2%
<b>1995-96</b>	5.3%	3.6%	4.4%	5.0%
<b>1996-97</b>	5.3%	5.3%	1.5%	-0.1%
<b>1997-98</b>	-4.3%	-6.5%	3.7%	1.1%

Generally speaking, using a small number of observations for statistical analysis is not considered good practice. In this instance, however, trends in the refined data set of 18 were not noticeably different from those indicated by analysis using the entire data set. Both the sample categories and overall spending figures suggest that SFO did not spend significantly more in FY 1998 than it had in previous years.

Figure 2 below shows the information from Table 6 in graphic form. Spending grew steadily by 5% for the years preceding the passage of the equal benefits ordinance, making the 4% decline in spending from 1997 to 1998 surprising, given the earlier argument that the EBO could put upward pressure on city spending through reduced competition and increased costs.

**Figure 2. Percentage Changes in Expenditures for SFO and LAX**



<sup>13</sup> Other items included in analysis were vehicle maintenance equipment, vehicle rental, laundry cleaning services, subscriptions, painters supplies, lumber supplies, communications supplies, laboratory supplies, miscellaneous hospital supplies, "other safety expenses," fuels and lubricants, water and sewage treatment supplies, agricultural supplies, and "other office supplies."

Of particular interest is the fact that costs at SFO did not appear to increase significantly, even when compared with LAX expenditures. If some regional phenomena, e.g. a downturn in the economy or reduced funding from the Federal Aviation Administration, were to cause reduced expenditures at airports around California, the SFO data by itself would be meaningless. Standing alone, the SFO data only indicates that expenditure on the average line item fell by about 5%. For example, if some regional effect caused all other airports in California to reduce spending from 1997 to 1998 by 15% and SFO only fell by 5%, SFO might indeed have experienced a very significant cost increase. LAX, however, experienced no such reduction in spending.

With minimal sample sizes and non-random samples of data, any statistical conclusions drawn from the data in Figure 2 should be regarded as having little predictive power. That being said, based on a significance test, the change in SFO spending from 1997 to 1998 is not significantly different from the change in SFO spending from 1996 to 1997, when considered at the 95% confidence level.<sup>14</sup> The decline in SFO expenditures observed in Table 6 and Figure 2 is not large enough to rule out the possibility that it is a result of random fluctuations caused by using a sample of data, however, this decline clearly suggests that SFO did not experience a large increase in spending.

Based on the analysis above, this report concludes that if SFO did experience changes in the prices it paid for goods and services as a result of the EBO, those changes were not noticeably large.

### 3. AN ALTERNATIVE EXPLANATION? BUREAUCRATIC ADAPTATION

Perhaps the analysis above did not show any increase in costs because the City of San Francisco bureaucracy simply adapted to the new law. In particular, city departments could have continued to contract with a non-compliant vendor after passage of the Equal Benefits Ordinance by redefining their products as only being available from a “sole source,”<sup>15</sup> which allows a waiver from the equal benefits requirement. If this phenomenon were taking place, this report would expect a rise in the number of exempted transactions as a bureaucratic response on the part of some San Francisco City administrators.

*The San Francisco Experience:* If city purchasers were slowly adapting to the new ordinance, exemptions should have steadily increased in number over time. However, an earlier section of this report shows that the number of sole source waivers dropped from 520 in the first year to less than 300 in subsequent years (Table 3 in Part One). If city purchasers were slowly adapting to the new ordinance, exemptions should have steadily increased in number over time. The actual pattern suggests that most contractors did not choose to adapt to the bureaucracy by seeking increasingly greater numbers of exemptions, but rather opted to comply with the new ordinance instead. The exemption patterns do not support the argument that bureaucratic adaptation has somehow understated the results of this analysis. This report, therefore, holds to the conclusion drawn earlier: any pressure the city felt on expenditure levels as a result of the Equal Benefits Ordinance was not noticeably large, as it was not detected by this analysis.

<sup>14</sup> Analysis consisted of a t-test for paired samples. The analysis yielded a P value of .095, which does not meet the standard statistical significance threshold of < .05. When using a common but less stringent significance standard of 10%, however, the difference is statistically significant.

<sup>15</sup> City administrators are generally required to maintain a certain budget and certain level of service. When new regulations arise that threaten to affect budget and service levels, some administrators might try to avoid reduction in service or budget overruns by circumventing the new regulation. In San Francisco, the “sole source” exemption clause in the domestic partners ordinance is particularly vulnerable. Theoretically, any request for a certain type of good or service could be written with an additional level of specificity so as to facilitate an exempted transaction. For example, suppose a city department used to contract with company X for the provision of widgets, and company X provided those widgets at the lowest price; if company X were to become ineligible for that contract, that city official might redefine the needs of his or her department so as to require only red widgets, which were, coincidentally, manufactured only by company X. Company X would then be a “sole source provider”, and would be exempt from the San Francisco domestic partners ordinance.

## 4. CONCLUSIONS

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The expenditure data analyzed in this report does not support a conclusion that there were substantial increases in the cost to SFO of doing business with the private and non-profit sectors. Furthermore, one possible explanation—that large numbers of exemptions were allowing city departments to circumvent the ordinance—is not substantiated by available data. The implications of this finding are city-wide. SFO, as a department of the City of San Francisco, contracts with the private and non-profit sectors for a broad array of goods and services, so conclusions drawn about SFO can be reasonably extrapolated to the entire City of San Francisco.

This report has explored what it considers the three primary reasons why prices might be expected to increase in any given city after implementation of an equal benefits ordinance. Following that exploration, an analysis of expenditures has suggested that, while each of these phenomena may have played a role in driving up prices, the aggregate effect was not large. The resulting conclusion is that the actual cost of the ordinance to the City of San Francisco is probably small.

This report concludes that the following occurred after implementation of the San Francisco equal benefits ordinance:

- Increases in labor costs for contractors were small, in the approximate range of 0.02% to 0.12%.
- San Francisco suffered some reduced competition due to fewer contractors submitting bids for City contracts. This level of competition fell by roughly one-half bid per contract for one year. After the first year of the EBO, the level of competition began to recover.
- San Francisco experienced an increase in the number of intermediaries bidding on City contracts, which may have, at least in the short run, contributed to an increase in price experienced by the City.
- The actual cost of the ordinance to the City of San Francisco is probably not large. If it were large, the increase would have been noticeable in the data analysis conducted by this study.
- A municipality can take a number of measures to mitigate any potential increases in cost following the passage of an equal benefits ordinance.

The final conclusion of this analysis of expenditure data from the San Francisco International Airport is that the City of San Francisco probably did not experience large price increases as a result of the Equal Benefits Ordinance, even though the EBO might have encouraged contractors to charge the city higher prices.

## 5. RECOMMENDATIONS FOR OTHER CITIES

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Other cities that are considering an equal benefits ordinance similar to that of San Francisco can take several steps to prevent a rise in the prices charged for goods and services sold to the city.

1. Disseminate literature throughout the city government regarding expected upward pressures on prices, namely that they are small, somewhere on the order of 0.02% to 0.12%. Also, require companies that are claiming excessive cost increases to justify them. This should make city departments better able to negotiate fair contracts and protect themselves from dishonest pricing.
2. For the first few years following implementation of the new ordinance, increase the number of bids required for city contracts. This should, in most cases, compensate for any loss of competition that might have resulted from large numbers of vendors becoming ineligible.

3. Minimize the number of intermediaries that appear by making compliance as easy as possible. Proactive dissemination of information regarding available insurers is one practical step a city can take to facilitate compliance. Maintaining a streamlined verification process associated with the ordinance will also encourage compliance, particularly among small businesses.
4. Enact the new ordinance but allow sufficient time for implementation to allow potential contractors to prepare.

Incorporating these measures into any new equal benefits legislation can help make for a social policy that is both economically sound and sensitive to the community it was intended to serve.

## APPENDIX

# OTHER CITIES AND STATES WITH EBOs OR RELATED REQUIREMENTS

Compiled by M. V. Lee Badgett, Ph.D.

### *Seattle, WA*

- Equal Benefits Ordinance passed November 1999, effective for contracts awarded on or after Sep. 30, 2000.
- Applies to public works, consulting, and purchasing contracts of at least \$37,000.
- Does not apply to subcontractors.
- Contractors must submit an "Equal Benefits Compliance Declaration" to the city.
- The City will conduct random audits to monitor compliance.

For more details, see <http://cityofseattle.net/contract/equalbenefits/default.htm>.

### *Los Angeles, CA*

- Equal Benefits Ordinance passed in 1999, in effect for contracts executed after January 1, 2000.
- Covers all contracts over \$5,000.

Contractor requirements:

- Self-certify that it provides equal benefits to employees with spouses and to employees with domestic partners.
- Inform employees of this requirement by posting a copy of the requirement in a prominent place.
- Give City access to records to verify compliance.
- Responsible for ensuring compliance by any subcontractors working on the city contract.

For more details, see [http://www.ci.la.ca.us/cao/Contractor\\_Enforcement/](http://www.ci.la.ca.us/cao/Contractor_Enforcement/).

### *Berkeley, CA*

- Equal Benefits Ordinance took effect for contracts awarded after July 1, 2001.
- Covers contracts for construction, public works, goods, services.
- Covers contracts of \$25,000 and over if for-profit employer; \$100,000 and over if non-profit employer or grant recipient; covers leases, licenses, concessions, and franchises that generate \$350,000 or more in receipts.

For more details, see <http://www.ci.berkeley.ca.us/onlineservice/finance/EBOFactsheet.pdf>.

### *Tumwater, WA*

- Equal Benefits Ordinance passed February 2001.
- Took effect January 2002.

*Oakland, CA*

- Applicable to contracts awarded on or after July 1, 2002.
- Covers public works, grants, goods and services, and property contracts of \$25,000 or more.
- Employees may file a complaint if an employer fails to comply. The City has the authority to examine an employer's benefits in response to a complaint.

For further details, see [http://www.bpcnet.com/cgi-bin/hilite.pl/codes/oakland/\\_DATA/TITLE02/Chapter\\_2\\_32\\_EQUAL\\_BENEFITS\\_ORDIN/](http://www.bpcnet.com/cgi-bin/hilite.pl/codes/oakland/_DATA/TITLE02/Chapter_2_32_EQUAL_BENEFITS_ORDIN/).

*Broward County, FL*

- Established a policy in 1999 that gives a bidding advantage to contractors with DP benefits.

*San Mateo County, CA*

- Passed in February 2001, applied to contracts awarded on or after July 1, 2001.
- Applies to all contracts.

*Portland, ME*

- Effective June 2001.
- Agencies receiving city funding must provide domestic partner benefits if their insurance companies provide them.

See Mark Shanahan, "City Starts Registry for Domestic Partners," Portland Press Herald, June 20, 2001.

*State of California*

- Signed into Law October 10, 2003, fully effective for contracts starting on or after July 1, 2007.
- Covers contracts of \$100,000 or more for goods and services.
- Contractors must sign statement that they are in compliance.
- Domestic partner defined as being registered with the State of California.